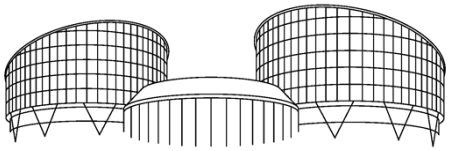

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KADIRZHANOV AND MAMASHEV v. RUSSIA

(Applications nos. 42351/13 and 47823/13)

JUDGMENT

STRASBOURG

17 July 2014

FINAL

15/12/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kadirzhanov and Mamashev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 24 June 2014,

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

PROCEDURE

1. The case originated in two applications (nos. 42351/13 and 47823/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Kyrgyzstan nationals, Mr Makhamadillo Makhammatkarimovich Kadirzhanov and Mr Bakhtier Tolanbayevich Mamashev ("the applicants"), on 2 July and 24 July 2013 respectively.

2. The applicants were represented by Ms Y. Ryabinina, Ms I. Biryukova and 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 applicants alleged that their respective extradition to the Kyrgyz Republic (Kyrgyzstan) would subject them to the risk of ill-treatment, that they had not had effective remedies available to them in this regard, and that there had been no speedy and effective judicial review of their respective detention.

4. On 2 July and 26 July 2013 the President of the First Section decided to apply Rule 39 of the Rules of Court in the applicants' respective cases, indicating to the Government that they should not be extradited to Kyrgyzstan until further notice, to also apply Rule 41 of the Rules of Court and to grant priority treatment to the applications.

5. On 10 September 2013 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are of Uzbek ethnic origin. They lived in the Jalal-Abad region of Kyrgyzstan. After mass disorders and inter-ethnic clashes in the region in June 2010, they left Kyrgyzstan for Russia to flee, together with many other ethnic Uzbeks, ethnically motivated violence.

A. Application no. 42351/13, Mr Kadirzhanov

7. Mr Kadirzhanov was born in 1970. He currently lives in Orel, Russia.

8. In July 2010 the applicant arrived in the town. Before June 2012 he had not lodged any applications for refugee status or temporary asylum.

9. On 3 October 2011 the Kyrgyz authorities charged the applicant *in absentia* with violent crimes committed in the course of the inter-ethnic violence of June 2010, when a group of individuals had barricaded a road near the village of Suzak, which had led to a number of deaths.

10. On 11 November 2011 the Suzak District Court ordered the applicant's detention for two months. The Kyrgyz authorities also added the applicant's name to an international wanted list.

11. On 14 May 2012 the applicant was arrested in Orel and placed in remand prison no. 1. It appears that he first learnt about the criminal prosecution and charges against him in Kyrgyzstan on that day. He denied his involvement in the June 2010 violence. On an unspecified date, the applicant was provided with the services of a State-appointed lawyer for the purposes of the extradition proceedings.

12. On 15 May 2012 the Severnyy district prosecutor of Orel ordered the applicant's custodial detention on the basis of the decision of 11 November 2011, referring to Article 61 of the 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention").

13. The Kyrgyz authorities confirmed their intention to seek the applicant's extradition.

14. On 12 June 2012 the Kyrgyzstan Prosecutor General's Office lodged a formal extradition request with its Russian counterpart. It submitted the following diplomatic assurances: that the applicant would be provided with every opportunity, as prescribed by international and Kyrgyz criminal law, to defend himself, including by way of legal assistance; that he would not be subjected to torture, cruel, inhuman or degrading treatment or punishment; and that he would not be prosecuted on political, racial, ethnic or religious grounds.

15. On 15 June 2012 the Severnyy district prosecutor again ordered the applicant's custodial detention, referring to Article 466 § 2 of the Russian Code of Criminal Procedure ("CCrP").

16. On the same date the applicant applied to the regional migration authority for refugee status.

17. On 10 July 2012 the Severnyy District Court of Orel examined the Severnyy district prosecutor's request to extend the applicant's detention for four months. Noting that the prosecutor had not substantiated the need for such a long period by reference to specific measures to be taken during the "extradition check" procedure (*экстрадиционная проверка*) and noting the need to take account of the upcoming decision on the application for refugee status (which could bar further extradition proceedings), the judge extended the applicant's detention for one month only, until 14 August 2012. On 25 July 2012 the Orel Regional Court upheld the extension order.

18. On 25 July 2012 the applicant's lawyer made submissions to the Russian Prosecutor General's Office in relation to, *inter alia*, the risk of ill-treatment in the event of the applicant's extradition to Kyrgyzstan.

19. On 9 August 2012 the Russian Ministry of Foreign Affairs wrote to the Russian Prosecutor General's Office, indicating that it had no specific information disclosing any impediment to the applicant's extradition. At the same time it indicated that because the applicant was of Uzbek ethnic origin "there could be a risk of premeditated biased attitude in the Kyrgyz authorities' examination of his case".

20. On 9 August 2012 the Severnyy District Court extended the applicant's detention until 14 November 2012. The decision was upheld on appeal on 31 August 2012.

21. On 31 October 2012 the regional migration authority dismissed the applicant's refugee status application. The authority relied on a note dated 13 July 2012 by the Federal migration authority on the general political and human rights situation in Kyrgyzstan in 2010-11. The applicant's allegation that he had received threats from ethnic Kyrgyz while in Kyrgyzstan was dismissed, because the reason behind the threats had been his wealth, not ethnic origin. The applicant appealed to the Federal migration authority. On 25 December 2012 his appeal was dismissed. The risk of ill-treatment remained unassessed.

22. In the meantime, on 13 November 2012 the Severnyy District Court extended the term of the applicant's detention until 14 February 2013, despite the lawyer's request to release the applicant on bail. The Orel Regional Court upheld the decision on appeal on 28 November 2012 arguing, *inter alia*, that there was no reason to vary the preventive measure in accordance with Article 110 of the CCrP.

23. On 11 February 2013 the Severnyy District Court extended the applicant's detention until 14 May 2013. The applicant lodged an appeal

with the court on the same day. On an unspecified date the case was transferred to the Orel Regional Court for examination.

24. On 26 February 2013 the Orel Regional Court held an appeal hearing and, finding that there was no reason to vary the preventive measure in accordance with Article 110 of the CCrP, upheld the extension order of 11 February 2013.

25. In the meantime, on 20 February 2013 the Kyrgyzstan Prosecutor General's Office amended its extradition request, with reference to the amended decision listing the charges against the applicant.

26. On 18 March 2013 the Russian Prosecutor General's Office granted the extradition request. The extradition order contained no assessment of the factual and legal matters relating to the alleged risk of ill-treatment in the requesting country, and did not mention any of the diplomatic assurances given by the Kyrgyz authorities.

27. On 2 April 2013 the applicant appealed against the extradition order claiming, *inter alia*, that the Russian Prosecutor General's Office had failed to assess the alleged risk of ill-treatment.

28. On 22 April 2013 the Basmannyy District Court of Moscow upheld the migration authorities' decisions of 31 October and 25 December 2012. The risk of ill-treatment was not assessed. On 12 July 2013 the Moscow City Court upheld the judgment.

29. In the meantime, on 23 April 2013 the Orel Regional Court held a judicial review hearing against the extradition order and upheld it. It summarily dismissed the allegations regarding the risk of ill-treatment, referring to the assurances given by the Kyrgyz authorities and to the fact that the applicant had been charged with "ordinary crimes" and thus was not being persecuted on political or ethnic grounds. The applicant appealed to the Supreme Court of Russia.

30. In May 2013 the Orel regional prosecutor sought the extension of the applicant's detention. The matter was submitted to the Orel Regional Court.

31. On 13 May 2013 the Orel Regional Court extended the applicant's detention for six months, to reach the maximum statutory period of eighteen months on 14 November 2013. It found that there were no grounds to vary the preventive measure in accordance with Article 110 of the CCrP. The applicant appealed.

32. On 24 May 2013 the Appeal Section of the Orel Regional Court held a hearing and upheld the detention order.

33. On 4 July 2013 the Supreme Court of Russia confirmed the judgment of 23 April 2013, thus upholding the extradition order. It summarily dismissed the applicant's arguments relating to the risk of ill-treatment. The court also stated that the Kyrgyz authorities had provided guarantees relating to legal assistance and the absence of ill-treatment.

34. On 20 September 2013 the applicant's lawyer, N., filed a request with the regional prosecutor's office for the applicant's release.

35. On 25 September 2013 the Orel regional deputy prosecutor ordered the applicant's release from custody under, *inter alia*, Articles 103 and 110 of the CCrP. He reasoned that the examination of the case pending before the Court, which had indicated interim measures pursuant to Rule 39 of the Rules of Court in respect of the applicant, would last longer than the maximum period of detention permissible. The deputy prosecutor varied the preventive measure to release from custody, after a personal guarantee was given by N. The ruling was not challenged and the applicant was released from custody.

B. Application no. 47823/13, Mr Mamashev

36. Mr Mamashev was born in 1984. He currently lives in Manyukhino, a village in the Moscow region of Russia.

37. The applicant arrived in Moscow in early August 2010. In 2010 and 2011 he did not lodge any applications for refugee status or temporary asylum in Russia.

38. On 24 August 2010 the Kyrgyz authorities charged the applicant *in absentia* with violent crimes committed in June 2010, when a group of individuals had barricaded a road near the village of Suzak, which had led to a number of deaths. The Kyrgyz authorities also added the applicant's name to an international wanted list.

39. On 25 August 2010 the Suzak District Court in Kyrgyzstan ordered the applicant's arrest and authorised his custodial detention for two months.

40. On 6 February 2012 he was arrested in Moscow and placed in a remand prison. It appears that he first learnt about the criminal prosecution and charges against him in Kyrgyzstan on that day.

41. On 7 February 2012 the Babushkinskiy inter-district prosecutor's office applied the preventive measure of custodial detention to the applicant, which was authorised by the Suzak District Court on 25 August 2010.

42. On an unspecified date the applicant was provided with the services of a State-appointed lawyer for the purposes of the extradition proceedings.

43. On 16 March 2012 the Kyrgyzstan Prosecutor General's Office submitted an extradition request to its Russian counterpart. The request contained the following diplomatic assurances: that the applicant would be provided with every opportunity, as prescribed by international and Kyrgyz criminal law, to defend himself, including by way of legal assistance; that he would not be extradited to a third country and would only stand trial in relation to the charges that gave rise to the extradition request; that he would not be subjected to torture, cruel, inhuman or degrading treatment or punishment; and that he would not be prosecuted on political, racial, ethnic or religious grounds.

44. On the same date the Babushkinskiy inter-district prosecutor's office again applied the Suzak District Court's chosen preventive measure to the applicant, thus extending his custodial detention.

45. On 30 March 2012 the Babushkinskiy District Court extended the applicant's detention until 5 June 2012.

46. On 12 April 2012 the applicant applied to the Moscow migration authority for refugee status, arguing persecution on the grounds of ethnic origin. On 17 July 2012 the authority dismissed the applicant's application at the admissibility stage. The Federal migration authority quashed this decision. His application was examined in October 2012.

47. In the meantime, on 18 April 2012 the Russian Ministry of Foreign Affairs wrote to the Russian Prosecutor General's Office, indicating that it had no specific information disclosing any impediment to the applicant's extradition. At the same time, it indicated that because the applicant was of Uzbek origin "there could be a risk of premeditated biased attitude in the Kyrgyz authorities' examination of his case".

48. On 23 April 2012 the applicant's lawyer made submissions to the Russian Prosecutor General's Office on the issue regarding the risk of ill-treatment in the event of the applicant's extradition to Kyrgyzstan. On 21 May 2012 it acknowledged receipt of the above-mentioned submissions and stated that they would be taken into consideration.

49. On 28 May 2012 the Babushkinskiy District Court extended the applicant's detention until 5 August 2012. The Moscow City Court dismissed an appeal against the decision on 9 July 2012.

50. On 8 June 2012 the Ostankinskiy District Court of Moscow dismissed complaints lodged by the applicant under Article 125 of the CCrP against the prosecutor's decisions of 7 February and 16 March 2012. The Moscow City Court upheld the decision on 1 August 2012.

51. On 2 August 2012 the Babushkinskiy District Court extended the applicant's detention until 5 October 2012. The Moscow City Court upheld the decision on appeal on 10 September 2012.

52. On 1 October 2012 the Babushkinskiy District Court extended the applicant's detention until 5 December 2012. The applicant's lawyer filed a statement of appeal dated 3 October 2012, which was registered by the Babushkinskiy District Court on 10 October 2012. On an unspecified date it was forwarded to the Moscow City Court.

53. On 11 October 2012 the Moscow migration authority examined the applicant's refugee status application on the merits, but dismissed it for lack of evidence regarding the applicant's allegations of possible persecution on the grounds of ethnic origin. The risk of ill-treatment was not assessed. The applicant challenged the refusal of 11 October 2012 before the Federal migration authority. His appeal was summarily dismissed on 26 December 2012. On an unspecified date he sought a judicial review of the refusals issued by the migration authorities.

54. On 4 December 2012 the Babushkinskiy District Court extended the applicant's detention until 5 February 2013. On 6 December 2012 the applicant's lawyer filed a statement of appeal, which was registered by the Babushkinskiy District Court on 13 December 2012. On an unspecified date it was forwarded to the Moscow City Court.

55. On 24 January 2013 the Russian Prosecutor General's Office requested further guarantees from its Kyrgyz counterpart, in relation to the possibility of visits to the applicant by Russian diplomatic staff during his detention in Kyrgyzstan. On 6 February 2013 the Kyrgyzstan Prosecutor General's Office submitted the required guarantees.

56. On 28 January 2013 the Moscow City Court heard appeals against the decisions of 1 October and 4 December 2012, but dismissed them.

57. On 1 February 2013 the Moscow City Court extended the applicant's detention until 5 August 2013. It received the applicant's appeal against this decision on 12 February 2013. The date on which it was filed remains unknown.

58. On 27 February 2013 the Russian Deputy Prosecutor General granted the extradition request. The extradition order did not contain any reasoning in relation to the alleged risk of ill-treatment in Kyrgyzstan. On 12 March 2013 the applicant was notified of the decision and appealed against it.

59. On 14 March 2013 the Appeal Section of the Moscow City Court dismissed the appeal against the decision of 1 February 2013.

60. By a judgment of 10 April 2013 the Basmannyy District Court of Moscow upheld the refugee application refusals issued by the migration authorities. The alleged risk of ill-treatment was not mentioned.

61. On 15 April 2013 the Moscow City Court upheld the extradition order on judicial review. It summarily dismissed the allegations regarding the risk of ill-treatment, stating that the applicant had been charged with "ordinary crimes" and thus was not being persecuted on political or ethnic grounds, and relied on the diplomatic assurances given by the Kyrgyz authorities.

62. On 19 June 2013 the Supreme Court of Russia upheld the judgment of 15 April 2013 on appeal, thus upholding the extradition order.

63. On 8 July 2013 the Moscow City Court confirmed the judgment of 10 April 2013 concerning the refusals issued by the migration authorities. It stated that the first-instance court had analysed the applicant's situation sufficiently.

64. On 31 July 2013 the Babushkinskiy district prosecutor of Moscow ordered the applicant's release because interim measures under Rule 39 of the Rules of Court had been indicated in respect of the applicant. The applicant was released on 1 August 2013 after a personal guarantee given by his lawyer.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

A. Applications for varying preventive measures

65. Article 110 of the CCrP provides that a preventive measure (such as detention) may be (i) cancelled, if no longer necessary, or (ii) replaced by a less or more intrusive measure, if the grounds for such a measure as indicated in Articles 97 and 99 are no longer the same.

66. Article 97 of the CCrP lists the grounds for imposing a preventive measure in a domestic criminal case, namely where there is sufficient reason to consider that the person suspected or accused of committing a criminal offence will (i) abscond from the investigation or evade justice, (ii) continue his or her criminal activity, or (iii) threaten a witness or another person involved in the criminal proceedings, destroy or tamper with evidence, or otherwise interfere with the proceedings. Article 97 also provides that a preventive measure may be imposed in relation to an extradition case.

67. Article 99 of the CCrP provides a non-exhaustive list of factors which should be taken into account when imposing a preventive measure, for instance the seriousness of the offence, information about the suspect's personality, as well as his or her age, state of health and employment status.

68. Article 119 of the CCrP lists the parties entitled to make an application in the course of criminal proceedings, such as suspects, defendants, lawyers, victims, prosecutors, experts, civil plaintiffs and other individuals whose interests have been affected at the pre-trial or trial stages. Such applications can be made to an inquirer, an investigator or a judge.

69. Article 120 of the CCrP provides that applications can be made at any stage of the criminal proceedings.

B. Other relevant legal issues

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

III. RELEVANT INTERNATIONAL MATERIALS CONCERNING KYRGYZSTAN

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

72. The UN Committee on the Elimination of Racial Discrimination considered the fifth to seventh periodic reports of Kyrgyzstan and in

February 2013 adopted the following concluding observations (CERD/C/KGZ/CO/5-7):

> "6. The Committee notes with concern that, according to the State party's report (CERD/C/KGZ/5-7, para. 12) and other reports, Uzbeks were the main victims of the June 2010 events but were also the most prosecuted and condemned. While noting that the State party itself has recognized this situation and is considering ways to correct it, the Committee remains deeply concerned about reports of biased attitudes based on ethnicity in investigations, prosecutions, condemnations and sanctions imposed on those charged and convicted in relation to the June 2010 events, who were mostly of Uzbek origin. The Committee is also concerned about information provided in the State party's report relating to evidence of coercion to confess to crimes that the persons did not commit, pressure on relatives by representatives of law enforcement agencies, denial of procedural rights (...), violations of court procedures, threats and insults to the accused and their counsel, attempts to attack the accused and his relatives which according to the State party resulted in a violation of the right to a fair trial ...
>
> [T]he Committee recommends that the State party in the context of the reform of its judicial system:
>
> (a) Initiate or set up a mechanism to review all cases of persons condemned in connection with the June 2010 events, from the point of view of respecting all necessary guarantees for a fair trial;
>
> (b) Investigate, prosecute and condemn, as appropriate, all persons responsible for human rights violations during the June 2010 events, irrespective of their ethnic origin and their status; ...
>
> 7. While noting information provided by the State party, the Committee remains concerned at reports that a great number of persons, mostly from minority groups, in particular Uzbeks, have been detained and have been subjected to torture and other forms of ill-treatment on the basis of their ethnicity following the June 2010 events. The Committee is also concerned at information that women from minority groups were victims of acts of violence, including rape, during, and in the aftermath of the June 2010 events. The Committee is particularly concerned that all such acts have not yet been investigated and those responsible have not been prosecuted and punished (arts. 5 and 6).
>
> In line with its general recommendation No. 31 (2005), the Committee recommends that the State party, without any distinction based on the ethnic origin of the victims, take appropriate measures to:
>
> (a) Register and document all cases of torture, ill-treatment and violence against women from minority groups, including rape;
>
> (b) Conduct prompt, thorough and impartial investigations;
>
> (c) Prosecute and punish those responsible, including police or security forces; ..."

73. The UN Committee against Torture considered Kyrgyzstan's second periodic report and in December 2013 issued concluding observations (CAT/C/KGZ/CO/2), which read, in so far as relevant, as follows:

"Impunity for, and failure to investigate, widespread acts of torture and ill-treatment

5. The Committee is deeply concerned about the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty, in particular while in police custody to extract confessions. These confirm the findings of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/19/61/Add.2, paras. 37 et seq.), and of the United Nations High Commissioner for Human Rights (A/HRC/20/12, paras. 40–41). While the Kyrgyz delegation acknowledged that torture is practised in the country, and affirmed its commitment to combat it, the Committee remains seriously concerned about the substantial gap between the legislative framework and its practical implementation, as evidenced partly by the lack of cases during the reporting period in which State officials have been prosecuted, convicted and sentenced to imprisonment for torture (arts. 2, 4, 12 and 16).

6. The Committee is gravely concerned at the State party's persistent pattern of failure to conduct prompt, impartial and full investigations into the many allegations of torture and ill-treatment and to prosecute alleged perpetrators, which has led to serious underreporting by victims of torture and ill-treatment, and impunity for State officials allegedly responsible (arts. 2, 11, 12, 13 and 16).

In particular, the Committee is concerned about:

(a) The lack of an independent and effective mechanism for receiving complaints and conducting impartial and full investigations into allegations of torture. Serious conflicts of interest appear to prevent existing mechanisms from undertaking effective, impartial investigations into complaints received;

(b) Barriers at the pre-investigation stage, particularly with regard to forensic medical examinations, which in many cases are not carried out promptly following allegations of abuse, are performed by medical professionals who lack independence, and/or are conducted in the presence of other public officials, leading to the failure of the medical personnel to adequately record detainees' injuries, and consequently to investigators' failure to open formal investigations into allegations of torture, for lack of evidence;

(c) The apparent practice by investigators of valuing the testimonies of individuals implicated in torture over those of complainants, and of dismissing complaints summarily; and

(d) The failure of the judiciary to effectively investigate torture allegations raised by criminal defendants and their lawyers in court. Various sources report that judges commonly ignore information alleging the use of torture, including reports from independent medical examinations.

...

7. The Committee remains seriously concerned by the State party's response to the allegations of torture in individual cases brought to the attention of the Committee, and particularly by the State party's authorities' refusal to carry out full investigations into many allegations of torture on the grounds that preliminary enquiries revealed no basis for opening a full investigation. The Committee is gravely concerned by the case of Azimjan Askarov, an ethnic Uzbek human rights defender prosecuted on criminal charges in connection with the death of a police officer in southern Kyrgyzstan in June 2010, which has been raised by several Special Rapporteurs, including the Special Rapporteur on the situation of human rights defenders (A/HRC/22/47/Add.4, para. 248; A/HRC/19/55/Add.2, para. 212). Mr. Askarov has alleged that he was

beaten severely by police on numerous occasions immediately following his detention and throughout the course of the criminal proceedings against him, and that he was subjected to repeated violations of procedural safeguards such as prompt access to a lawyer and to an effective, independent medical examination. The Committee notes that independent forensic medical examinations appear to have substantiated Mr. Askarov's allegations of torture in police custody, and have confirmed resulting injuries including persistent visual loss, traumatic brain injury, and spinal injury. Information before the Committee suggests that Mr. Askarov's complaints of torture have been raised on numerous occasions with the Prosecutor's office, as well as with the Kyrgyz Ombudsman's office, and with Bazar-Korgon District Court, the Appeal Court and the Supreme Court. To date, however, the State party's authorities have declined to open a full investigation into his claims, relying on allegedly coerced statements made by Mr. Askarov while in police custody that he had no complaints. The Committee understands that the State party is presently considering the possibility of further investigating these claims. The Committee is concerned by the State party's refusal to undertake full investigations into allegations of torture regarding other cases raised during the review, including those of Nargiza Turdieva and Dilmurat Khaidarov (arts. 2, 12, 13 and 16).

...

8. The Committee remains concerned at the lack of full and effective investigations into the numerous allegations that members of the law enforcement bodies committed torture and ill-treatment, arbitrary detention and excessive use of force during and following the inter-ethnic violence in southern Kyrgyzstan in June 2010. The Committee is concerned by reports that investigations, prosecutions, condemnations and sanctions imposed in relation to the June 2010 events were mostly directed against persons of Uzbek origin, as noted by sources including the Committee on the Elimination of Racial Discrimination, in 2013 (CERD/C/KGZ/CO/5-7, paras. 6–7). The Committee further regrets the lack of information provided by the State party on the outcome of the review of 995 criminal cases relating to the June 2010 violence (arts. 4, 12, 13 and 16).

...

Coerced confessions

13. The Committee is seriously concerned at numerous, consistent and credible reports that the use of forced confessions as evidence in courts is widespread. While noting that the use of evidence obtained through unlawful means is prohibited by law, it is deeply concerned that in practice there is a heavy reliance on confessions within the criminal justice system. The Committee is further concerned at reports that judges have frequently declined to act on allegations made by criminal defendants in court, or to allow the introduction into evidence of independent medical reports that would tend to confirm the defendant's claims of torture for the purpose of obtaining a confession. The Committee regrets the lack of information provided by the State party on cases in which judges or prosecutors have initiated investigations into torture claims raised by criminal defendants in court, and is alarmed that no official has been prosecuted and punished for torture even in the single case brought to its attention in which a conviction obtained by torture was excluded from evidence by a court – that of Farrukh Gapiurov, who was acquitted by the Osh Municipal Court of involvement in the June 2010 violence (arts. 2 and 15)."

74. The Kyrgyzstan chapter of Amnesty International's "2013 Annual Report", in so far as relevant, reads as follows:

"Torture and other ill-treatment remained pervasive throughout the country and law enforcement and judicial authorities failed to act on such allegations. The authorities continued to fail to impartially and effectively investigate the June 2010 violence and its aftermath and provide justice for the thousands of victims of serious crimes and human rights violations, including crimes against humanity. Ethnic Uzbeks continued to be targeted disproportionately for detention and prosecution in relation to the June 2010 violence.

...

The Osh City Prosecutor stated in April that out of 105 cases which had gone to trial in relation to the June 2010 violence, only two resulted in acquittals. Only one of those cases involved an ethnic Uzbek, Farrukh Gapirov, the son of human rights defender Ravshan Gapirov. He was released after the appeal court found his conviction had been based on his confession which had been obtained under torture. However, no criminal investigation against the police officers responsible for his torture was initiated.

By contrast, the first – and, to date, the only – known conviction of ethnic Kyrgyz for the murder of ethnic Uzbeks in the course of the June 2010 violence was overturned."

75. Human Rights Watch's "World Report 2013: Kyrgyzstan" contains the following findings concerning the situation in Kyrgyzstan in 2012:

"Kyrgyzstan has failed to adequately address abuses in the south, in particular against ethnic Uzbeks, undermining long-term efforts to promote stability and reconciliation following inter-ethnic clashes in June 2010 that killed more than 400 people. Despite an uneasy calm in southern Kyrgyzstan, ethnic Uzbeks are still subjected to arbitrary detention, torture, and extortion, without redress.

...

Local human rights non-governmental organizations reported that the overall number of reported incidents of arbitrary detention and ill-treatment in police custody continued to decrease in 2012 in the south, although they still document new cases. Groups also reported the growing problem of law enforcement extorting money, in particular from ethnic Uzbeks, threatening criminal prosecution related to the June 2010 events. Victims of extortion rarely report incidents for fear of reprisals.

Investigations into the June 2010 violence have stalled. Trials of mostly ethnic Uzbeks connected to the violence continued to take place in violation of international fair trial standards, including the trials of Mahamad Bizurukov and Shamshidin Niyazaliev, each of whom was sentenced to life in prison in October 2012.

Lawyers in southern Kyrgyzstan continued to be harassed in 2012 for defending ethnic Uzbek clients who were charged with involvement in the June 2010 violence, perpetuating a hostile and violent environment that undermined defendants' fair trial rights. On January 20, a group of persons in Jalalabad verbally and physically attacked a lawyer defending the ethnic Uzbek owner of an Uzbek-language television station. No one has been held accountable for such violence against lawyers.

...

In hearings related to the June 2010 violence, judges continue to dismiss, ignore, or fail to order investigations into torture allegations. In a rare exception, four police officers were charged with torture after the August 2011 death of Usmonzhon Kholmirzaev, an ethnic Uzbek, who succumbed to internal injuries after he was

beaten by police in custody. Repeated delays in proceedings have meant that over a year later, the trial has yet to conclude. In June, after Abdugafur Abdurakhmanov, an ethnic Uzbek serving a life sentence in relation to the June 2010 violence, died in prison, authorities did not open an investigation, alleging he committed suicide."

76. In its report "Kyrgyzstan: 3 Years After Violence, a Mockery of Justice" issued in June 2013 Human Rights Watch observed, among other things, the following:

"Criminal investigations into the June 2010 violence have been marred by widespread arbitrary arrests and ill-treatment, including torture. Unchecked courtroom violence and other egregious violations of defendants' rights have blocked the accused from presenting a meaningful defense. Human Rights Watch has documented how investigations disproportionately and unjustly targeted ethnic Uzbeks, and how this group has a heightened risk of torture in custody.

...

The ethnic clashes erupted in southern Kyrgyzstan on June 10, 2010. The violence, which lasted four days, left more than 400 people dead and nearly 2,000 houses destroyed. Horrific crimes were committed against both ethnic Kyrgyz and ethnic Uzbeks. However, while ethnic Uzbeks suffered the majority of casualties and destroyed homes, the majority of those prosecuted for homicide have been ethnic Uzbeks.

...

Human Rights Watch's research from 2010-2013 in southern Kyrgyzstan found that prosecutorial authorities have repeatedly refused to investigate serious and credible allegations of torture. Courts have relied heavily on confessions allegedly extracted under torture to sentence defendants to long prison terms."

77. The Kyrgyzstan chapter of Human Rights Watch's "2014 World Report" reads, in so far as relevant, as follows:

"Shortcomings in law enforcement and the judiciary contribute to the persistence of grave abuses in connection to the ethnic violence in southern Kyrgyzstan in June 2010. Ethnic Uzbeks and other minorities remain especially vulnerable. Courtroom attacks on lawyers and defendants, particularly in cases related to the June 2010 events, occur with impunity.

Government officials and civil society representatives formed a national center for the prevention of torture in 2013. In practice, ill-treatment and torture remain pervasive in places of detention, and impunity for torture is the norm.

...

Three years on, justice for crimes committed during the ethnic violence in southern Kyrgyzstan in June 2010 remains elusive. The flawed justice process has produced long prison sentences for mostly ethnic Uzbeks after convictions marred by torture-tainted confessions and other due process violations. Authorities have not reviewed convictions where defendants alleged torture or other glaring violations of fair trial standards. At least nine ethnic Uzbeks continue to languish in pretrial detention, some for a third year. New convictions in August 2013 of three ethnic Uzbeks in Osh, and pending extradition orders of at least six others in Russia again point to judicial bias against ethnic Uzbeks.

The authorities failed to tackle the acute problem of courtroom violence by audiences in trials across Kyrgyzstan, including at the trial of three opposition members of parliament in June, perpetuating an environment that undermines defendants' fair trial rights. Lawyers were harassed or beaten in court in 2013, including for defending ethnic Uzbek clients in June 2010 cases. Mahamad Bizurukov, an ethnic Uzbek defendant, and his lawyers have been subjected to repeated threats, harassment, and physical attacks for two years, most recently in September 2013, with no accountability for perpetrators.

...

Despite the adoption of a national torture prevention mechanism in 2012, and the organization of a related National Center for the Prevention of Torture in 2013, authorities often refuse to investigate allegations of torture and perpetrators go unpunished. On rare occasions when charges are filed against police, investigations, and court proceedings are unduly protracted.

A telling example is the criminal case against four police officers following the August 2011 death of an ethnic Uzbek detained on charges related to the June 2010 ethnic violence. Usmonjon Kholmirzaev died several days after his release without charge, apparently from injuries he sustained from beatings in custody. The prosecution has been subjected to repeated delays over the last two years and no one has yet been held accountable for his death.

In July 2013, Nurkamil Ismailov was found dead in a temporary detention facility in southern Kyrgyzstan after police detained him for disorderly conduct. Authorities alleged he committed suicide by hanging himself with his t-shirt. The Jalalabad-based human rights group *Spravedlivost* intervened after which authorities opened a criminal investigation on charges of negligence. In September, Ismailov's relative and the police settled out of court for an undisclosed sum, with no admission of liability."

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

79. The applicants complained that because of their Uzbek ethnic origin, they would face a real risk of ill-treatment if extradited to Kyrgyzstan. They argued that they belonged to a specific group, namely ethnic Uzbeks suspected of involvement in the violence of June 2010, members of which were systematically being tortured by the Kyrgyz authorities. They also complained that their arguments concerning the risk of being subjected to ill-treatment in the requesting country had not received genuine and

thorough consideration by the Russian authorities. They relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

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

A. Submissions by the parties

1. The Government

80. The Government contested the applicants' allegations. They argued that the general human rights situation in Kyrgyzstan had improved in 2013 to 14, in comparison with that described in the case of *Makhmudzhan Ergashev* (cited above). Certain positive developments in the requesting country had been noted by the Organization for Security and Co-operation in Europe (OSCE). The reports by non-governmental organisations (NGOs) ought to be attached less importance than those by "official sources" and considered with a great deal of caution.

81. The Government further claimed that while certain prejudices towards ethnic Uzbeks persisted in the requesting country, there was no "flagrant denial of justice" for the Uzbek minority in Kyrgyzstan. The diplomatic assurances given by the Kyrgyz authorities in the applicants' respective cases excluded the possibility of their ill-treatment upon extradition. The Court had not yet allowed demonstrating the effectiveness of Russian authorities' diplomatic supervision mechanism for the protection of the rights of those extradited to Kyrgyzstan because it had indicated interim measures precluding such extraditions.

82. Further, the Government argued that the applicants had not demonstrated any individual risk of ill-treatment in Kyrgyzstan. Neither of them had applied for refugee status prior to their arrests in Russia. Neither they nor their close relatives still residing in Kyrgyzstan had ever been persecuted there. The Russian migration authorities' refusals to grant refugee status to the applicants had been well-grounded and duly motivated.

83. The applicants had effective domestic remedies at their disposal, as they had had an ample opportunity to express their concerns of alleged ill-treatment before the Russian Prosecutor General's Office and domestic courts at two levels of jurisdiction.

84. In view of the above, the Government considered that the applicants' grievances under Articles 3 and 13 of the Convention were to be dismissed as manifestly ill-founded.

2. The applicants

85. The applicants maintained their allegations. Referring to the recent material by the UN Committee against Torture and Human Rights Watch, the applicants insisted that the general human rights situation in Kyrgyzstan had not improved since the adoption of the judgment in the *Makhmudzhan Ergashev* case, and that practices of torture at the hands of the Kyrgyz authorities had remained widespread.

86. They further alleged that the Russian authorities had failed to thoroughly examine the issue regarding possible ill-treatment in the requesting country in the context of the respective sets of domestic proceedings related to the extradition and refugee status applications. The diplomatic assurances relied on by the authorities both at national level and before the Court could not provide sufficient guarantees against the risk of ill-treatment, considering the fact that torture had been widespread and unaccounted for in Kyrgyzstan, and given the absence of an independent monitoring mechanism satisfying the criteria established in the case of *Othman (Abu Qatada) v. the United Kingdom* (no. 8139/09, § 189, ECHR 2012).

87. In sum, the applicants maintained their complaints under Articles 3 and 13 of the Convention.

B. The Court's assessment

1. Article 3 of the Convention

(a) Admissibility

88. The Court notes that the applications 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.

(b) Merits

(i) General principles

89. The Court will examine the merits of this part of the applicants' complaints under Article 3 in the light of the applicable general principles reiterated in, among other cases, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references).

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

90. The Court observes that the Russian authorities ordered that the applicants both be extradited to Kyrgyzstan. The extradition orders have not been enforced as a result of an indication by the Court of an interim measure under Rule 39 of the Rules of Court. It will therefore assess whether the applicants face a risk of treatment contrary to Article 3 in the event of their extradition to Kyrgyzstan – the material date for the assessment of that risk being that of the Court's consideration of the case – taking into account the assessment made by the domestic courts (see, *mutatis mutandis*, *Bakoyev v. Russia*, no. 30225/11, § 113, 5 February 2013).

91. Turning to the general human rights climate in the requesting country, the Court observes the following. In a previous case concerning extradition to Kyrgyzstan, it found that in 2012 the situation in the south of the country was characterised by torture and other ill-treatment of ethnic Uzbeks by law-enforcement officers, which had increased in the aftermath of the events of June 2010 and remained widespread and rampant, being aggravated by the law-enforcement officers' impunity. Moreover, the Court established that the issue ought to be seen in the context of the rise of ethno-nationalism in the politics of Kyrgyzstan, particularly in the south, the growing inter-ethnic tensions between Kyrgyz and Uzbeks, continued discriminatory practices faced by Uzbeks at the institutional level and under-representation of Uzbeks in, amongst others, law-enforcement bodies and the judiciary (see *Makhmudzhan Ergashev*, cited above, § 72). As is clear from the reports by UN bodies and reputable NGOs, in 2012-13 the situation in the southern part of Kyrgyzstan had not improved. In particular, various reports are consistently in agreement when describing biased attitudes based on ethnicity in investigations, prosecutions, condemnations and sanctions imposed on ethnic Uzbeks charged and convicted in relation to the events in the Jalal-Abad Region, as well as a lack of full and effective investigations into the numerous allegations of torture and ill-treatment imputable to the Kyrgyz law-enforcement agencies, arbitrary detention and the excessive use of force against Uzbeks allegedly involved in the events of June 2010 (see paragraphs 72-77 above). Accordingly, the Court concludes that the current overall human rights situation in Kyrgyzstan remains highly problematic (see, *mutatis mutandis*, *Klein v. Russia*, no. 24268/08, § 51, 1 April 2010).

92. The Court will now examine whether there are any individual circumstances substantiating the applicants' fears of ill-treatment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I). It reiterates in this connection that where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 enters into play when the applicant establishes, where necessary on the basis of information contained in recent reports by independent international human rights protection

bodies or NGOs, that there is serious reason to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features (see *Saadi v. Italy* [GC], no. 37201/06, § 132, ECHR 2008, and *NA. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008). The Court considers that this reasoning is of particular relevance in the present case, where the applicants, ethnic Uzbeks, are charged with a number of serious offences allegedly committed in the course of the violence of June 2010 (see, by contrast, *Makhmudzhan Ergashev*, cited above, § 73). Given the widespread use by the Kyrgyz authorities of torture and ill-treatment in order to obtain confessions from ethnic Uzbeks charged with involvement in the inter-ethnic riots in the Jalal-Abad Region, which has been reported both by UN bodies (see paragraphs 72-73 above) and reputable NGOs (see paragraphs 74-77 above), the Court is satisfied that the applicants belong to a particularly vulnerable group, the members of which are routinely subjected to treatment proscribed by Article 3 of the Convention in the requesting country.

93. The Court further observes that the above-mentioned circumstances were brought to the attention of the Russian authorities by both applicants in the course of the respective proceedings (see paragraphs 21 and 46). Since the domestic authorities' reaction to the allegations regarding the risk of ill-treatment in their individual cases was nearly identical, the Court deems it appropriate to analyse the issue jointly.

94. It notes that the applicants' refugee applications were dismissed by the migration authorities, which found –that finding being subsequently confirmed by the domestic courts – that the applicants were not eligible for refugee status, because there was no evidence that they were being persecuted on the grounds of their ethnic origin. The applicants' arguments in respect of the risk of ill-treatment were not addressed at all (see paragraphs 21, 28 and 53 above). As for the extradition proceedings, the Court notes that in the applicants' respective cases the Russian Prosecutor General's Office failed to assess the alleged risk of ill-treatment altogether (see paragraphs 26 and 58). The courts that upheld their extraditions orders, in their turn, dismissed the applicants' allegations for the sole reason that Kyrgyzstan had provided diplomatic assurances against ill-treatment (see paragraphs 29 and 61 above). In such circumstances, the Court is not convinced that the issue regarding the risk of ill-treatment was subjected to rigorous scrutiny in the refugee status or extradition proceedings (see *Abdulkhakov*, cited above, § 148).

95. It remains to be considered whether the risk to which the applicants would have been exposed if extradited was alleviated by the diplomatic assurances provided by the Kyrgyz authorities to the Russian Federation. According to the assurances given, the applicants would not be subjected to torture, cruel, inhuman or degrading treatment or punishment and Russian

diplomatic staff would be given an opportunity to visit Mr Mamashev in the detention facility (see paragraphs 14, 43 and 55 above).

96. Even accepting that the assurances in question were not couched in general terms, the Court observes that Kyrgyzstan is not a Contracting State to the Convention, nor have its authorities demonstrated the existence of an effective system of legal protection against torture that could act as an equivalent to the system required of the Contracting States. Moreover, it has not been demonstrated before the Court that Kyrgyzstan's commitment to guaranteeing access to Mr Mamashev by Russian diplomatic staff would lead to effective protection against proscribed ill-treatment in practical terms, as it has not been shown that the staff would be in possession of the expertise required for an effective follow-up of the Kyrgyz authorities' compliance with their undertakings. Nor was there any guarantee that they would be able to speak to the applicant without witnesses. In addition, their potential involvement was not supported by any practical mechanism setting out, for instance, a procedure by which the applicant could lodge complaints with them or by which they could have unfettered access to detention facilities (see, *mutatis mutandis*, *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, §§ 132-33, 3 October 2013).

97. The Court is mindful of the fact that, in the Government's view, it is responsible for the lack of evidence demonstrating the existence of a monitoring mechanism in Kyrgyzstan capable of satisfying the criteria established in the case of *Othman (Abu Qatada)* (cited above, §§ 203-04) (see paragraph 81 above). However, it cannot agree with the Government in this regard as it has only indicated interim measures thus staying extraditions from Russia to Kyrgyzstan in a handful of cases, including the two applications under consideration. It follows that it has been open to the Government to refer to examples of successful application of the monitoring mechanism in cases where extraditions to Kyrgyzstan were successfully finalised in the absence of any interim measures.

98. In view of the above, the Court cannot accept the Government's assertion that the assurances provided by the Kyrgyz authorities were sufficient to exclude the risk of the applicants' exposure to ill-treatment in the requesting country.

99. Considering the attested widespread and routine use of torture and other ill-treatment by law-enforcement agencies in the southern part of Kyrgyzstan in respect of members of the Uzbek community, to which the applicants belong, the impunity of its law-enforcement officers and the absence of sufficient safeguards for the applicants in the requesting country, the Court finds it substantiated that the applicants would face a real risk of treatment proscribed by Article 3 if returned to Kyrgyzstan.

100. Accordingly, the Court finds that the applicants' respective extradition to Kyrgyzstan would be in violation of Article 3 of the Convention.

2. Article 13 in conjunction with Article 3

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

102. It further notes that it has already examined the substance of this complaint in the context of Article 3 of the Convention (see paragraph 94 above). Having regard to the findings relating to Article 3 (see paragraph 100 above), the Court considers that it is not necessary to examine this complaint separately on the merits (see, with further references, *Makhmudzhan Ergashev*, cited above, § 79).

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

103. The applicants further complained that the appeal proceedings in respect of the detention orders of 11 February and 13 May 2013 (in respect of Mr Kadirzhanov) and detention orders of 1 October, 4 December 2012 and 1 February 2013 (in respect of Mr Mamashev) did not comply with the "speediness" requirement in breach of Article 5 § 4 of the Convention. Mr Kadirzhanov also alleged, relying on the same provision, that he had had no separate *habeas corpus* procedure at his disposal for a review of his detention.

104. Article 5 § 4 of the Convention 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

1. The Government

(a) Speediness of review on appeal

105. In respect of the applicants' respective complaints concerning the allegedly lengthy examination of their appeals against the detention orders, the Government argued as follows.

106. As to the appeal against the detention order of 11 February 2013 in respect of Mr Kadirzhanov, the statement of appeal had been received on 11 February 2013, and then translated into Kyrgyz. On 14 February 2013 Mr Kadirzhanov's lawyer had been informed by telephone that an appeal hearing would be taking place on 20 February 2013 and had confirmed his attendance. On 15 February 2013 Mr Kadirzhanov had been sent a copy of

his lawyer's statement of appeal and the translation into Kyrgyz. On 20 February 2013 the appeal hearing had been postponed as the lawyer had failed to attend. On 26 February 2013 the Orel Regional Court had held the hearing in the presence of a court-appointed lawyer. Hence, the delay between the decision of 11 February 2013 extending Mr Kadirzhanov's term of detention and the appeal against it had been fifteen days, which in the Government's view was not excessive.

107. As to the appeal against the detention order of 13 May 2013, it had been examined on 24 May 2013, eleven days after the first-instance decision. During that period, a translation of the statement of appeal into Kyrgyz had been organised and a new lawyer appointed as Mr Kadirzhanov's lawyer had requested that the appeal hearing be held in his absence. In the circumstances of the case, a delay of eleven days was compatible with the speediness of review requirement.

108. As to the detention orders in respect of Mr Mamashev, the appeals against them of 1 October and 4 December 2012 – lodged on 10 October and 13 December 2012 respectively – had been examined on 28 January 2013. The appeal against the order of 1 February 2013, received by the court on 14 February 2013, had been examined on 14 March 2013. The delays had been caused by the necessity to translate the texts of the detention orders and the statements of appeal into Kyrgyz. The Government have not referred to any particular difficulties in arranging the translations.

109. In sum, the Government suggested that the applicants' complaints under this head were manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

(b) Availability of a *habeas corpus* procedure in respect of Mr Kadirzhanov

110. The Government submitted that an automatic periodic review was available under Articles 108 and 109 of the CCrP. They argued that between 14 May 2012 and 12 May 2013 Mr Kadirzhanov's detention had been reviewed and extended at relatively short intervals ranging from one to three months, which in their view were not unreasonably long in the context of extradition.

111. They further claimed that the domestic legal system allowed for an application for the release of those detained pending extradition under Articles 119 and 120 of the CCrP, yet they have not provided any examples of application of this legal mechanism.

112. The Government asserted that the extension of the term of detention by six months on 13 May 2013 had been necessary because the refugee status procedures had been still pending. The applicant could have been extradited within three months of that decision had it not been for the application of Rule 39.

113. The Government further claimed that under Article 110 of the CCrP a prosecutor could at any stage of criminal proceedings reconsider an

issue of custodial detention either on a detainee's request or of their own motion and submitted that this provision had been applied in the present case. Mr Kadirzhanov had been released from detention on the basis of a prosecutor's decision on 25 September 2013 upon the request of his lawyer on 20 September 2013. The prosecutor had taken into account the indication of the interim measures under Rule 39 of the Rules of Court.

114. It had been open to the applicant to apply for release under Article 110 of the CCrP immediately after the interim measures had been indicated on 2 July 2013. Had the prosecutor rejected such a request, the decision could have been appealed against before a court. Furthermore, if the applicant had considered that the prosecutor had been under an obligation to release him *proprio motu*, he could have challenged his failure to act before a court under Article 125 of the CCrP. The Government lastly pointed out that the applicant could have directly requested a court to release him; however, they have not specified any domestic legal provision whereby direct application could be made to a court before the expiry of a previously authorised term of detention.

115. In sum, the Government insisted that this complaint was manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

2. The applicants

116. The applicants maintained that the delays in examining the appeals against the detention orders had been excessive. Mr Mamashev argued that the delays in examining his statements of appeal had been attributable in full to the authorities. Mr Kadirzhanov, in his turn, acceded that some of the delays in the appeal proceedings against the detention orders of 11 February and 13 May 2013 (six and three days respectively) had been attributable to his lawyer, whereas the remainder of the delays (nine and eight days respectively) had been imputable to the State. Both applicants insisted that there had been no need to translate their lawyers' statements of appeal, as they had acted on their instructions and in their best interests.

117. Mr Kadirzhanov further claimed that the intervals between the instances of "automatic periodic review" of the lawfulness of his detention pending extradition had been excessively long, as he could not request the domestic courts to reconsider the issue of custodial detention after the interim measures had been indicated by the Court, which, according to him, amounted to a new relevant factor. He further disagreed with the Government's assertion that it had been open to him to initiate proceedings for release under Article 110 of the CCrP, as in his view it had been incumbent on the State agencies to initiate such proceedings of their own motion. He further claimed that the application procedure under Articles 119 and 120 of the CCrP could not be regarded as an effective remedy in his case, as it was only applicable to parties to criminal proceedings instituted in Russia. Moreover, any prosecutor's decision taken

on the basis of that procedure could only be challenged in court under Article 125 of the CCrP, which does not empower a court to order a detainee's release, even if it were to find the impugned detention order unlawful or unjustified (see *Zokhidov v. Russia*, no. 67286/10, § 188, 5 February 2013).

B. The Court's assessment

1. Admissibility

118. 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

(a) Speediness of review

(i) General principles

119. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention, and to an order terminating it if proved unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for an appeal, the appellate body must also comply with the requirements of Article 5 § 4, for instance as concerns the speediness of the review in appeal proceedings. Accordingly, in order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to effect an overall assessment where the proceedings have been conducted at more than one level of jurisdiction (see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009). At the same time, the standard of "speediness" is less stringent when it comes to proceedings before an appellate court (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007).

120. 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).

(ii) Mr Kadirzhanov's application

121. The Court notes that the periods between the first-instance detention orders of 11 February and 13 May 2013 and the appeal decisions amounted to fifteen and eleven days respectively (see paragraphs 23 and 31 above). The applicant accepted that only the delays of nine and eight days out of those respective periods were attributable to the authorities (see paragraph 116 above). The Court considers that the delays in question do not appear excessive.

122. In these circumstances, the Court finds that there has been no violation of Article 5 § 4 of the Convention on account of the length of the proceedings in Mr Kadirzhanov's appeals against the detention orders of 11 February and 13 May 2013.

(iii) Mr Mamashev's application

123. Turning to the circumstances of Mr Mamashev's case, the Court notes that the applicant's appeal against the extension order of 1 October 2012 was lodged on 3 October 2012 (see paragraph 52 above). However, the appeal hearing took place 115 days after the statement of appeal was filed and fifty-three days after the expiry of the term authorised by the impugned order (see paragraph 56 above). The appeal against the decision of 4 December 2012, examined together with the appeal against the previous detention order, was lodged on 6 December 2012 (see paragraph 54 above). In other words, it took the Moscow City Court fifty-two days to decide on the issue. The appeal against the detention order of 1 February 2013 was heard on 14 March 2013, thirty days after it had reached the District Court (see paragraphs 57 and 59 above).

124. The Court does not find any indication to suggest that any delays in the examination of the applicant's appeals against the detention orders mentioned above were attributable to his conduct. The Government have argued that the delays had been caused by a need to arrange for a translation of the statements of appeal written by the lawyer acting in the applicant's interests into Kyrgyz. However, the Court tends to agree with the applicant's assertion that such translations were unnecessary, considering that he entrusted his lawyer with the representation of his interests in legal matters before the Russian authorities (see paragraph 116 above).

125. Even assuming for the sake of argument to the contrary, whatever the reason for the delays, the Convention requires the Contracting States to organise their legal systems so as to enable the courts to comply with its various requirements. It is incumbent on the judicial authorities to make the necessary administrative arrangements to ensure that urgent matters are dealt with speedily, and this is particularly necessary when an individual's

personal liberty is at stake (see, with further references, *S.T.S. v. the Netherlands*, no. 277/05, § 48, ECHR 2011).

126. In such circumstances, the Court considers that the amount of time it took the Moscow City Court to examine the applicant's appeals against the first-instance detention orders in the present case, namely, 115, fifty-two and thirty days respectively, can only be characterised as inordinate. This is not reconcilable with the requirement of "speediness" as set out in Article 5 § 4 of the Convention (see *Yefimova v. Russia*, no. 39786/09, § 292, 19 February 2013).

127. Furthermore, not only the delays in examining the applicant's appeals were inordinate. On at least one occasion, the appeal proceedings were protracted to the extent that the term of detention authorised by the impugned decision of 1 October 2012 expired long before the appeal hearing (see paragraphs 52 and 56 above). The Court notes that the applicant's statement of appeal was lodged with the District Court well before the expiry of the two-month authorised term of detention. No grounds other than the alleged need to translate the statement of appeal for the applicant have been stated to explain why the Moscow City Court could not reasonably have been expected to give a decision within that time. In the absence of relevant grounds, the Court cannot but find that the lack of a final decision before the validity of the authorisation for the applicant's detention expired was itself sufficient to deprive the applicant's appeal of its practical effectiveness as a preventive or even reparatory remedy (see, *mutatis mutandis*, *S.T.S.*, cited above, § 60).

128. The Court thus finds that there has been a violation of Article 5 § 4 of the Convention on account of the length of the proceedings in Mr Mamashev's appeals against the detention orders of 1 October and 4 December 2012, and 1 February 2013.

(b) Alleged unavailability of a judicial review of detention

(i) General principles

129. The Court reiterates that 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 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). Long intervals in the context of automatic periodic review may give rise to a violation of Article 5 § 4 (see, among other authorities, *Herczegfalvy v. Austria*, 24 September 1992, § 77, Series A no. 244). By virtue of Article 5 § 4, a detainee is entitled to apply to a "court" having jurisdiction to "speedily" decide whether or not his or her deprivation of liberty has become "unlawful" in the light of new factors which have emerged

subsequently to the initial decision to order his or her remand in custody (see *Ismoilov and Others*, no. 2947/06, § 146, 24 April 2008). The requirements of Article 5 § 4 as to what may be considered a "reasonable" interval in the context of periodic judicial review also varies from one domain to another, depending on the type of deprivation of liberty in question (see, for a summary of the Court's case-law in the context of detention for the purposes set out in sub-paragraphs (a), (c), (e) and (f) of Article 5 § 1, *Abdulkhakov*, cited above, §§ 212-14).

130. The Court observes that it is not its task to attempt to rule as to the maximum period of time between reviews which should automatically apply to a certain category of detainees. The question of whether periods comply with the requirement must be determined in the light of the circumstances of each case (see *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 55, Series A no. 107, and *Oldham v. the United Kingdom*, no. 36273/97, § 31, ECHR 2000-X). The Court must, in particular, examine whether any new relevant factors that have arisen in the interval between periodic reviews have been assessed, without unreasonable delay, by a court having jurisdiction to decide whether or not the detention has become "unlawful" in the light of these new factors (see *Abdulkhakov*, cited above, § 215).

(ii) Application of the above principles in Mr Kadirzhanov's case

131. The Court notes at the outset that in the context of the review of the applicant's detention the Government briefly referred to possibilities for him to lodge applications under Articles 119 and 120 of the CCrP; however, they have not provided any explanation as to the manner in which such applications could have amounted to a request for release or periodic judicial review at reasonable intervals of the lawfulness of the applicant's detention pending extradition.

132. Furthermore, the Government suggested that the applicant could have asked prosecutors to release him under Article 110 of the CCrP immediately after the interim measures had been indicated on 2 July 2013 (see paragraph 114 above). The Court points out in this respect that Article 110 of the CCrP does not provide for a clear mechanism of applying for cancellation or varying the preventive measure in the context of detention pending extradition. Given that the applicant was initially placed in custody on the basis of Article 61 of the Minsk Convention (see paragraph 12 above) and a month later his detention was ordered on the basis of Article 466 § 2 of the CCrP (see paragraph 15 above), the Court is not persuaded that lodging a motion under Article 110 of the CCrP could be regarded as an avenue of recourse in his case. Moreover, it remains unclear in which manner the application of Rule 39 by the Court would either make the applicant's detention in custody "no longer necessary" within the meaning of Article 110 of the CCrP (see paragraph 65 above) or constitute a

change in the circumstances that warranted the initial placement in custody as indicated in Articles 97 and 99 of the CCrP (see paragraphs 66 and 67 above), which is a prerequisite condition for varying the preventive measure in accordance with Article 110 of the CCrP. The Government have not demonstrated an established domestic practice of interpretation of the latter provision. Accordingly, the Court is not in a position to interpret the fact that the applicant had not applied for release immediately after the indication of the interim measures to his disadvantage.

133. Since it does not transpire from the Government's observations that they referred to the above-mentioned possibilities as potential avenues of exhaustion of domestic remedies, the Court deems it possible to proceed with the examination of the gist of the applicant's complaint, namely, the alleged lack of judicial review of his detention following important developments in his extradition case.

134. It is noteworthy that in a number of previous cases against Russia, the Court has already accepted that proceedings for the extension of detention pending extradition before a first-instance court amounted to a form of periodic review of a judicial nature (see, for instance, *Khodzhamberdiyev v. Russia*, no. 64809/10, §§ 109-10, 5 June 2012; *Rustamov v. Russia*, no. 11209/10, § 176, 3 July 2012; *Niyazov v. Russia*, no. 27843/11, § 153, 16 October 2012; and *Sidikovy v. Russia*, no. 73455/11, §§ 182-83, 20 June 2013). Accordingly, it considers that, for the purposes of establishing whether the periodic review of the lawfulness of the applicant's detention took place at "reasonable intervals", the date of the first-instance extension order, 13 May 2013 (see paragraph 31 above), should be taken as a trigger date for calculating the said interval.

135. The Court's task is therefore to ascertain whether the period of five months and fifteen days between 13 May 2013, when the Orel Regional Court sitting as a first-instance court decided to extend the applicant's detention for six months, and 25 September 2013, when a prosecutor ordered his release (see paragraph 35 above), constituted a "reasonable interval" compatible with the requirements of Article 5 § 4 of the Convention.

136. It observes in this connection that during the period of detention under consideration two important developments occurred in the applicant's extradition case. Firstly, on 2 July 2013 the Court indicated an interim measure under Rule 39 of the Rules of Court (see paragraph 4 above). Secondly, on 4 July 2013 the extradition order was upheld at final instance and the extradition proceedings were thus completed (see paragraph 33 above).

137. As the applicant could not be extradited owing to the indication by the Court of an interim measure under Rule 39 of the Rules of Court, any preparation for the enforcement of the extradition order had to be suspended for an indefinite period of time. The Court considers that both the indication

of an interim measure and the adoption of the final decision upholding the extradition order constituted new relevant factors that might have affected the lawfulness of, and justification for, the applicant's continued detention. This was, in a way, confirmed by the Orel deputy regional prosecutor in his decision of 25 September 2013 ordering the applicant's release owing to the interim measures indicated under Rule 39 of the Rules of Court (see paragraph 35 above). The applicant was therefore entitled under Article 5 § 4 to proceedings to have those new relevant factors assessed by a court without unreasonable delay (see *Abdulkhakov*, cited above, § 216). It was not, however, until almost three months after these factors emerged that the lawfulness of the applicant's detention was reviewed and his release ordered.

138. In view of the above-mentioned considerations, the Court finds that in the applicant's case the efficiency of the system of automatic periodic judicial review was undermined by the fact that the new relevant factors capable of affecting the lawfulness of his detention, which had arisen in the interval following the most recent review by the first-instance court, could not be examined by a court for a considerably long period of time. It thus concludes that the length of the interval between the extension order of 13 May 2013 and the proceedings of 25 September 2013, when the preventive measure in respect of the applicant was varied, was unreasonable.

139. There has therefore been a violation of Article 5 § 4 of the Convention on this account.

(c) Conclusions

140. To sum up the above findings, the Court:

(a) finds no violation of Article 5 § 4 of the Convention on account of the length of the proceedings in Mr Kadirzhanov's appeals against the detention orders of 11 February and 13 May 2013;

(b) finds a violation of Article 5 § 4 of the Convention on account of the length of the proceedings in Mr Mamashev's appeals against the detention orders of 1 October and 4 December 2012, and 1 February 2013;

(c) finds a violation of Article 5 § 4 of the Convention on account of the unavailability of a judicial review of Mr Kadirzhanov's detention between 13 May and 25 September 2013.

IV. RULE 39 OF THE RULES OF COURT

141. 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.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. 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

144. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

145. The Government suggested that, were the Court to find any violation of the Convention in the applicants' cases, such a finding in itself would constitute sufficient just satisfaction.

146. The Court observes that no breach of Article 3 of the Convention has yet occurred in the present case. However, it has found that the decision to extradite the applicants would, if implemented, give rise to a violation of that provision. It considers that its finding regarding Article 3 in itself amounts to adequate just satisfaction for the purposes of Article 41. Nonetheless, considering the above findings of violations of Article 5 § 4 of the Convention, the Court, making an assessment on an equitable basis, awards EUR 5,000 to each applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on those amounts.

B. Costs and expenses

147. Relying on lawyers' timesheets, the applicants also claimed EUR 9,400 in legal fees and EUR 658 in postal expenses for costs and expenses incurred at national level and before the Court.

148. The Government contended that the lawyers' fees and other expenses were not shown to have been actually paid or incurred. They further submitted that the amount of legal fees claimed was excessive.

149. 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, are reasonable as to quantum and relate to those parts of an application in which a violation has

been found. The applicants did not submit any documents confirming the payment of postal expenses. The Court therefore rejects this part of the claim.

150. As regards the legal fees, regard being had to the documents in its possession and the above criteria (see *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV), the Court considers it reasonable to award the sum of EUR 6,100, plus any tax which may be chargeable to the applicants on that amount, to be paid to the representatives' bank account.

C. Default interest

151. 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that the applicants' respective extradition to Kyrgyzstan would amount to a violation of Article 3 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 13 taken in conjunction with Article 3 of the Convention;

5. *Holds* that there has been no violation of Article 5 § 4 of the Convention on account of the length of the proceedings in Mr Kadirzhanov's appeals against the detention orders of 11 February and 13 May 2013;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the length of the proceedings in Mr Mamashev's appeals against the detention orders of 1 October and 4 December 2012, and 1 February 2013;

7. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the unavailability of a judicial review of Mr Kadirzhanov's detention between 13 May and 25 September 2013;

8. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 6,100 (six thousand one hundred euros), plus any tax that may be chargeable to the applicants jointly, in respect of costs and expenses, to be paid to the representatives' bank account;

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

9. *Dismisses* the remainder of the applicants' claim for just satisfaction;

10. *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 applicants until such time as the present judgment becomes final or until further order.

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

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President