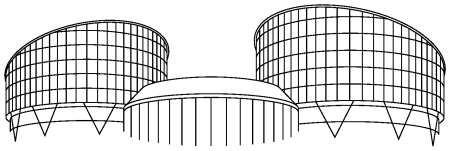

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MAMADALIYEV v. RUSSIA

(Application no. 5614/13)

JUDGMENT

STRASBOURG

24 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 Mamadaliyev 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 1 July 2014,

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

PROCEDURE

1. The case originated in an application (no. 5614/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Kyrgyz national, Mr Umidzhan Malikzhanovich Mamadaliyev ("the applicant"), on 22 January 2013.

2. The applicant was represented by Ms M.M. Abubakarova, a lawyer practising in Grozny. 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, if extradited to Kyrgyzstan he would be subjected to treatment prohibited by Article 3 of the Convention because he belonged to the Uzbek minority.

4. On 22 January 2013 the President of the First Section, acting upon the applicant's request of 22 January 2013, decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the applicant should not be extradited to Kyrgyzstan until further notice and granting priority treatment to the application.

5. On 30 April 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1989 and lives in Grozny.

7. The applicant is an ethnic Uzbek. He was born and lived in Jalal-Abad in the south of Kyrgyzstan. In 2004 he and his family moved to Dagestan and, three years later, to Grozny where the applicant worked at a telephone repair service. In October 2011 the applicant went to Jalal-Abad to attend his sister's wedding. On 7 November 2011 he was carrying several passengers of Kyrgyz ethnic origin in his car. Afterwards one of them, a Mr M., was found dead.

8. On 10 November 2011 the applicant returned to Grozny.

A. Criminal proceedings against the applicant in Kyrgyzstan

9. On 9 November 2011 the Jalal-Abad regional police department brought criminal proceedings against the applicant and four other individuals on suspicion of having murdered Mr M. On 12 November 2011 the applicant was charged *in absentia* and on 15 November 2011 the Jalal-Abad Town Court ordered his remand in custody, allegedly in the absence of his lawyer. On 3 February 2012 the applicant was placed on the international wanted list.

10. According to the applicant and as confirmed by a lawyer of a local human rights organisation (see paragraph 22 below), several Kyrgyz law-enforcement officers had demanded 6,000 United States dollars from his mother in return for dropping the criminal charges against him. Apparently she did not comply with their demand.

11. On 26 June 2012 the Suzakskiy District Court of the Jalal-Abad Region convicted Mr U. of Mr M.'s murder and six more individuals of misprision and disorderly conduct. The applicant is mentioned in the judgment as the driver of the car transporting the defendants and the victim on the night of the murder. It does not follow from the judgment that the applicant had been involved in Mr M.'s murder, which had apparently been committed by Mr U. alone.

12. On 27 July 2012 the Jalal-Abad Regional Court of Kyrgyzstan altered the judgment of the trial court by reducing the term of Mr U.'s imprisonment from nineteen to twelve years.

B. The applicant's arrest and remand in custody in Russia

13. On 23 April 2012 the applicant was arrested in Grozny.

14. On 24 April 2012 the prosecutor of the Leninskiy District of Grozny issued an order for the applicant to be remanded in custody for a period of two months.

15. On 18 June 2012 the Leninskiy District Court of Grozny extended the applicant's detention until 24 October 2012. The applicant neither objected at the hearing nor appealed against that decision.

16. On 19 October 2012 the District Court extended the applicant's detention until 24 January 2013, reasoning that extradition proceedings were pending and that the applicant might abscond.

17. On 22 October 2012 the applicant appealed against that decision to the Supreme Court of the Republic of Chechnya. He argued that the court had failed to duly reason the risk of his absconding, that the period of his detention was excessive, and that the court had not considered less stringent preventive measures, in breach of paragraph 16 of Directive Decision no. 22 adopted by the Plenary Session of the Russian Supreme Court on 14 June 2012.

18. By a final decision of 22 November 2012 the Supreme Court of the Republic of Chechnya rejected the appeal and upheld the lower court's ruling.

19. On 24 January 2013 the District Court extended the applicant's period of detention until 24 April 2013. On 11 March 2013 the Supreme Court of the Republic of Chechnya dismissed an appeal lodged by the applicant and upheld that decision.

20. On 19 April 2013 the Deputy Prosecutor of the Republic of Chechnya noted the interim measure indicated by the Court and ordered the applicant's release on condition that he did not leave his place of residence without permission and behaved properly (*подписка о невыезде и надлежащем поведении*).

C. Extradition proceedings

21. On 21 May 2012 the Deputy Prosecutor General of Kyrgyzstan lodged an extradition request with the Deputy Prosecutor General of the Russian Federation seeking to extradite the applicant to Kyrgyzstan for prosecution on charges of murder (see paragraph 9 above). The request stated, *inter alia*, that the applicant would not be extradited to any other State without the Russian Prosecutor General's consent, that he would be prosecuted only for the offence which was the subject of the extradition request and which was not of a political nature, that in the event of conviction the applicant would be free to leave the territory of Kyrgyzstan after serving his sentence, and that he would not be subjected to any form of

discrimination on any ground, including his nationality. The request also stated that the applicant would not be subjected to torture, inhuman or degrading treatment or punishment prohibited by the United Nations Convention against Torture.

22. On an unspecified date, at the request of the applicant's mother, a lawyer from a Kyrgyz human-rights NGO, Mr Mamatislamov, wrote a letter to the head of the extradition department of the Prosecutor General's Office of the Russian Federation. In the letter Mr Mamatislamov argued that the applicant's criminal prosecution was arbitrary. He confirmed that police officers had demanded money from the applicant's mother in exchange for dropping the criminal charges against the applicant. He stated that the Kyrgyz authorities had been showing the applicant's photo to victims of the events of June 2010 to make them remember him with a view to charging him with the killings of ethnic Kyrgyz after his extradition. He also gave details of several criminal cases initiated against ethnic Uzbeks who had allegedly been tortured and/or killed by the Kyrgyz police. In support of his statements Mr Mamatislamov referred to the opinion of the UN Special Rapporteur on Torture who had concluded after his visit to Kyrgyzstan that many ethnic Uzbeks had been arbitrarily convicted in Kyrgyzstan in recent years.

23. On 6 June 2012 the Prosecutor General's Office of the Russian Federation made enquiries with the Russian Ministry of Foreign Affairs on the issue of the applicant's extradition to Kyrgyzstan. On 21 June 2012 the Ministry of Foreign Affairs replied as follows:

> "... the Ministry of Foreign Affairs has no information which prevents the extradition of the Kyrgyz national U.M. Mamadaliyev to the law-enforcement authorities of the Kyrgyz Republic.
>
> U.M. Mamadaliyev is of Uzbek ethnic origin, he does not belong to the titular ethnic group in Kyrgyzstan, which makes it possible for the Kyrgyz authorities to hear his case in an arbitrary manner."

24. On 20 September 2012 the Deputy Prosecutor General of the Russian Federation granted the request for the applicant's extradition.

25. On 11 October 2012 the applicant lodged a court appeal against the extradition decision. He pointed out that by the judgment of the Suzakskiy District Court of the Jalal-Abad Region of 26 June 2012, Mr U. had been found guilty of the murder of Mr M. with which the applicant had been charged. It followed from that judgment that nobody had been charged with complicity in that murder. The applicant further noted that the law-enforcement officers had attempted to extort money from his mother in exchange for dropping the criminal charges against him. He argued that the accusation of murder against him was baseless as he had not committed that crime. Besides, as a member of the ethnic Uzbek community, which was being persecuted and discriminated against, he would, if extradited, be subjected to torture or degrading treatment. The applicant's lawyer gave

several examples of such ill-treatment suffered by ethnic Uzbeks in Kyrgyzstan.

26. On 12 November 2012 the Supreme Court of the Republic of Chechnya rejected the applicant's appeal. In its decision the Supreme Court relied, *inter alia*, on the following: (a) the assurances by the Kyrgyz Republic Prosecutor General's Office, in particular that the applicant would not be subjected to torture and other forms of ill-treatment – the court stated that it had no reasons to doubt that they would be observed; (b) the Russian authorities' rejection of the applicant's request for refugee status; and (c) the fact that the extradition request had not been made for the purpose of prosecuting or punishing the applicant on account of his race, religion, nationality or political opinion.

27. On 17 November 2012 the applicant appealed against that decision to the Supreme Court of the Russian Federation. In addition to the arguments put forward before the Supreme Court of the Republic of Chechnya, his lawyer referred to information on the widespread practice of ill-treatment of detainees in Kyrgyzstan, as confirmed by the UN High Commissioner on Human Rights, the UN Special Rapporteur on Torture, Human Rights Watch and Amnesty International.

28. On 23 January 2013 by a final decision the Supreme Court of the Russian Federation rejected the applicant's appeal against the decision of the Supreme Court of the Republic of Chechnya of 12 November 2012. It endorsed the lower court's reasoning without commenting on the applicant's reference to the international sources regarding the risk of ill-treatment.

D. Refugee status proceedings

29. On 25 June 2012 the applicant submitted a request for refugee status before the Federal Migration Service of the Russian Federation ("the FMS"). On 2 August 2012 his application was rejected as ill-founded. In its decision the Department of the FMS in the Republic of Chechnya pointed out that the applicant had submitted his request after the beginning of the extradition proceedings. They also mentioned that such requests often served the purpose of revoking decisions to extradite.

30. The applicant appealed against that decision before the Leninskiy District Court of Grozny. In his appeal he referred to information on the widespread practice of ill-treatment of Uzbek detainees in Kyrgyzstan, as confirmed by the UN High Commissioner on Human Rights, the UN Special Rapporteur on Torture, Human Rights Watch and Amnesty International.

31. On 22 November 2012 the District Court dismissed the appeal and upheld the FMS's decision. The court did not address the applicant's arguments concerning the risk of ill-treatment and found that the reason for

the applicant's request for refugee status was his fear of criminal prosecution. It held that there was therefore no legal basis for granting the request.

32. On 20 December 2012 the applicant lodged an appeal against that decision before the Supreme Court of the Republic of Chechnya. He pointed out, *inter alia*, that the District Court had ignored his reference to information on the practice of ill-treatment confirmed by international human-rights organisations.

33. On 5 March 2013 the Supreme Court of the Republic of Chechnya dismissed the applicant's appeal. It did not analyse his arguments concerning the risk of ill-treatment in Kyrgyzstan.

E. Temporary asylum proceedings

34. On an unspecified date the applicant requested the Department of the FMS in the Republic of Chechnya to grant him temporary asylum in Russia. On 15 August 2013 that request was granted and the applicant was provided with temporary asylum until 15 August 2014.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

35. For a summary of relevant domestic and international law, see *Makhmudzhan Ergashev* v. Russia (no. 49747/11, §§ 47-51, 16 October 2012).

III. RELEVANT INTERNATIONAL MATERIALS CONCERNING KYRGYZSTAN

36. For a number of relevant reports and items of information, see *Makhmudzhan Ergashev*, cited above, §§ 30-46.

37. The United Nations 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; ..."

38. 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)."

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

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

...

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

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

40. 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."

41. 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."

42. The Kyrgyzstan chapter of the 2014 World Report published by Human Rights Watch reads, in so far as relevant, as follows:

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

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

...

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

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

...

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

A telling example is the criminal case against four police officers following the August 2011 death of an ethnic Uzbek detained on charges related to the June 2010

ethnic violence. Usmonjon Kholmirzaev died several days after his release without charge, apparently from injuries he sustained from beatings in custody. The prosecution has been subjected to repeated delays over the last two years and no one has yet been held accountable for his death.

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained that, if extradited to Kyrgyzstan, he would be subjected to torture or inhuman or degrading treatment or punishment because he belonged to the Uzbek ethnic minority. He referred to various sources, including publications by the UN Committee against Torture, Amnesty International and Human Rights Watch. He relied on 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. The parties' submissions

1. The Government

44. The Government contested that argument. They stated that the Kyrgyz Republic had applied for the applicant's extradition in connection with his participation in a "general" crime, which had not been connected with the inter-ethnic clashes that had taken place in 2010 in Kyrgyzstan. In its request for the applicant's extradition the Prosecutor General's Office of the Kyrgyz Republic had provided the applicant with an adequate guarantee against the risk of ill-treatment. It had issued assurances that there were no political grounds for his prosecution, which was not connected with his nationality or religion, that he would not suffer torture or other cruel or degrading treatment, and that his rights of defence would be protected.

45. The Government further referred to a letter by the Prosecutor General's Office of the Kyrgyz Republic to the Russian Ministry of Foreign Affairs – the Government have not made the letter available to the Court – that the competent authorities of Kyrgyzstan would provide Russian diplomatic staff with access to the place of the applicant's detention to make sure that his rights were being respected. The Government pointed out that

in the course of their cooperation with the Prosecutor General's Office of the Kyrgyz Republic in the sphere of extradition there had been no instances of violations of the guarantees provided by Kyrgyzstan.

46. The domestic authorities had thoroughly examined the applicant's allegations of the risk of ill-treatment before deciding on his extradition. In doing so they had relied, *inter alia*, on information from the Ministry of Foreign Affairs and the Federal Security Service, which had reported that there were no obstacles to extraditing the applicant to Kyrgyzstan. Citing the Court's case-law, the Government noted that a reference to a general problem concerning human-rights observance in a particular country could not alone serve as a basis for refusing extradition.

47. In accordance with the Court's decision to apply Rule 39, the applicant's extradition had been suspended pending further notice by the Court. In view of this circumstance, as well as the fact that the applicant had been released from custody, the Government submitted that he could not be considered as a "victim" of a violation of Article 3 of the Convention, and his complaint was inadmissible *ratione personae*.

2. The applicant

48. The applicant maintained his complaint. He argued that the assurances given by the Kyrgyz Republic Prosecutor General's Office could not be considered as providing him with an adequate guarantee against the risk of ill-treatment.

49. Firstly, the assurances contained only superficial standard phrases, rather than specific and concrete provisions relating to the applicant's particular situation.

50. Secondly, the Government had failed to disclose the source of their information concerning the possibility that the applicant could be visited by Russian diplomatic staff. Likewise, they had failed to give details of the procedures for that type of visit.

51. Thirdly, those assurances were totally unreliable in the particular circumstances of the applicant's case, namely: (a) the Kyrgyz authorities had already held that the murder with which the applicant had been charged had been committed by another person with no accomplices; (b) the Kyrgyz authorities had failed to allow the applicant's lawyer to participate in a number of important procedural measures carried out in his criminal case; (c) in 2012 the Kyrgyz authorities had attempted to initiate another criminal prosecution of the applicant; his photo had been shown to some victims to make them remember him with a view to charging him with the killing of ethnic Kyrgyzs; (d) law-enforcement officers had attempted to extort money from the applicant's mother in exchange for dropping the criminal charges against him; and (e) the applicant was a member of a particularly vulnerable group that faced a serious risk of ill-treatment if handed over to the Kyrgyz authorities.

52. The applicant submitted that before deciding on his extradition the authorities had failed to genuinely analyse the substance of his claim that he would be exposed to a risk of ill-treatment. They had failed to analyse the general human-rights situation in Kyrgyzstan as well as the applicant's particularly vulnerable situation. Instead, they had limited the scope of their analysis to verification of some formal conditions for extradition provided in legislation.

B. The Court's assessment

1. Admissibility

53. The Court notes the Government's argument that the complaint should be declared inadmissible as incompatible *ratione personae* (see paragraph 47 above). It reiterates that an individual may no longer claim to be a victim of a violation of the Convention where the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see, among many authorities, *Achour v. France* (dec.) no. 67335/01, 11 March 2004, in which the authorities annulled the expulsion order against the applicant, and *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

54. As to the specific category of cases involving expulsion measures, the Court has consistently held that an applicant cannot claim to be the "victim" of a measure which is not enforceable (see *Vijayanathan and Pusparajah v. France*, 27 August 1992, § 46, Series A no. 241-B; see also *Pellumbi v. France* (dec.), no. 65730/01, 18 January 2005, and *Etanji v. France* (dec.), no. 60411/00, 1 March 2005). It has adopted the same stance in cases where execution of the deportation or extradition order has been stayed indefinitely or otherwise deprived of legal effect and where any decision by the authorities to proceed with deportation can be appealed against before the relevant courts (see *Kalantari v. Germany* (striking out), no. 51342/99, §§ 55-56, ECHR 2001-X, and *Mehemi v. France* (no. 2), no. 53470/99, § 54, ECHR 2003-IV; see also *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 355, ECHR 2005-III; *Andric v. Sweden* (dec.), no. 45917/99, 23 February 1999; *Benamar and Others v France* (dec.), no. 42216/98, 14 November 2000; and *Djemailji v. Switzerland* (dec.), no. 13531/03, 18 January 2005).

55. In the present case, the Russian authorities' decision to extradite the applicant to Kyrgyzstan was made final on 23 January 2013 (see paragraph 28 above). Having regard to the Court's interim measure under Rule 39 of the Rules of Court not to extradite the applicant until further notice, the authorities suspended the applicant's extradition and released him from custody on condition that he did not leave his place of residence and behaved properly (see paragraphs 20 and 47 above). Nothing in the above

actions by the domestic authorities indicates that they acknowledged that there had been or would have been a violation of Article 3 or that the applicant's extradition order had been deprived of its legal effect (see *Karimov v. Russia*, no. 54219/08, § 90, 29 July 2010).

56. In these circumstances, the Court considers that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention.

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

2. Merits

(a) General principles

58. For a summary of the relevant general principles emerging from the Court's case-law see *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012).

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

59. The Court observes that the Russian authorities ordered the applicant's extradition to Kyrgyzstan in connection with his prosecution on charges of murder, in criminal proceedings which are pending against him in Jalal-Abad in the south of Kyrgyzstan. Jalal-Abad, which was the scene of violent inter-ethnic clashes between Kyrgyz and Uzbeks in June 2010, is apparently, in the absence of any other arrangements known to the Court, where the applicant would be extradited (see paragraph 9 above). The Court will assess whether the applicant faces a risk of treatment contrary to Article 3 in the event of his extradition to Kyrgyzstan – the material date for the assessment of that risk being that of the Court's consideration of the case – taking into account the assessment made by the domestic courts (see, *mutatis mutandis*, *Bakoyev v. Russia*, no. 30225/11, § 113, 5 February 2013).

60. 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. This had increased in the aftermath of the events of June 2010 and remained widespread and rampant, aggravated by the impunity of law-enforcement officers. Moreover, the Court established that the issue ought to be seen in the context of the rise of ethno-nationalism in the politics of Kyrgyzstan, particularly in the south, the growing inter-ethnic tensions between Kyrgyz and Uzbeks, the continuation of discriminatory practices faced by Uzbeks at 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 (see paragraphs 37-42 above), the situation in the south of Kyrgyzstan did not improve in 2012-13. In particular, various reports state that a great number of persons, particularly Uzbeks, have been subjected to arbitrary arrests and detention, torture and other forms of ill-treatment on the basis of their ethnicity. Abuses in the south of Kyrgyzstan, particularly against ethnic Uzbeks, have not been adequately addressed. There is a growing problem of law-enforcement officers extorting money, in particular from ethnic Uzbeks, by threatening criminal prosecution. Accordingly, the Court concludes that the current overall human-rights situation in Kyrgyzstan remains highly problematic.

61. The Court will now examine whether there are any individual circumstances substantiating the applicant's fears of ill-treatment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I). It reiterates in this respect that where an applicant alleges that he or she is a member of a group that is systematically exposed to a practice of ill-treatment, the protection of Article 3 enters into play when the applicant establishes, where necessary on the basis of information contained in recent reports by independent international human-rights protection bodies or non-governmental organisations, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features (see *Saadi v. Italy* [GC], no. 37201/06, § 132, ECHR 2008, and *NA. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008).

62. The widespread use by the Kyrgyz authorities of torture and ill-treatment of ethnic Uzbeks in the Jalal-Abad Region has been repeatedly reported by UN bodies (see paragraphs 37-38 above) and reputable NGOs (see paragraphs 39-42 above). Even though the majority of the reported instances of ill-treatment involve those charged with crimes related to the June 2010 violence, the Court has already observed in a previous case concerning the extradition of an ethnic Uzbek to Kyrgyzstan that the practice of torture and other ill-treatment in the requesting country could be described as routine in cases involving ethnic Uzbek suspects detained on charges unrelated to the June 2010 violence (see *Makhmudzhan Ergashev*, cited above, § 73). Accordingly, the Court is satisfied that even though the applicant has been charged with a crime not related to the June 2010 events, he belongs to a particularly vulnerable group, the members of which are routinely subjected to treatment proscribed by Article 3 of the Convention in the requesting country. The Court is mindful of the fact that the applicant's extradition request was connected with the charge of murder of an ethnic Kyrgyz.

63. The Court observes that the above circumstances were brought to the attention of the Russian authorities. In the domestic proceedings in which the applicant challenged the decision to extradite him, he argued that as an ethnic Uzbek he would face a serious risk of ill-treatment should extradition be ordered. On the one hand, he referred to the general situation in the south of Kyrgyzstan characterised by the continuing practice of persecution of and discrimination against the ethnic Uzbek community. On the other hand, he stressed that in his particular case there existed specific grounds to believe that his individual prosecution was arbitrary and he therefore ran a real risk of ill-treatment. He referred to the fact that the Kyrgyz authorities had already established that the murder of Mr M. had been committed by Mr U. alone, who had already been found guilty of it by the final judgment of a domestic court. Moreover, law-enforcement officers had attempted to extort money from the applicant's mother in exchange for dropping the criminal charges against him (see paragraphs 11 and 25 above). The judgment of the Supreme Court of the Republic of Chechnya of 12 November 2012 had no regard to the applicant's arguments concerning the risk of his ill-treatment in Kyrgyzstan. It relied on the assurances given by the Kyrgyz Republic Prosecutor General's Office, stating that the court "ha[d] no reason to doubt [them]". It also referred to the decision of the Federal Migration Service to reject the applicant's request for refugee status and its finding that he would not be persecuted on political grounds (see paragraph 26 above). The Supreme Court of the Russian Federation essentially repeated the lower court's reasoning. It did not address the applicant's statements or assess the risk of his ill-treatment on the basis of reports by reputable sources. It thereby abstained from compensating for the lower court's failure to make such an assessment (see paragraph 28 above).

64. Furthermore, when deciding on the applicant's request for refugee status, the courts also failed to give an adequate reply to his arguments concerning the risk of ill-treatment (see paragraphs 31 and 33 above).

65. In such circumstances, the Court is not convinced that the issue of the risk of ill-treatment was subjected to rigorous scrutiny in the extradition or refugee-status proceedings (see *Abdulkhakov v. Russia*, no. 14743/11, § 148, 2 October 2012).

66. It remains to be considered whether the risk to which the applicant would be exposed if extradited has been alleviated by the assurances provided by the Kyrgyz authorities to the Russian Federation.

67. The Court notes that assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at

the material time (see *Saadi*, cited above, § 148, and *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, §§ 187-89, ECHR 2012 (extracts)).

68. The Court further notes that according to the assurances given, the applicant would not be subjected to torture, cruel, inhuman or degrading treatment or punishment (see paragraph 21 above). The Russian authorities relied on those assurances without any scrutiny, stating that they had "no reason to doubt" that they would be observed (see paragraph 26 above).

69. 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. While those assurances appear to be formally binding on the local authorities, the Court has serious doubts, in view of the poor human-rights record of the south of the country, whether the local authorities there can be expected to abide by them in practice (see *Makhmudzhan Ergashev*, cited above, §§ 35-46; paragraphs 37-42 above). Furthermore, the Court notes that the Government's reference to an additional assurance to provide Russian diplomatic staff with access to the place of the applicant's detention has not been supported by any evidence (see paragraph 45 above). Moreover, it has not been demonstrated before the Court that Kyrgyzstan's commitment to guaranteeing access to the applicant by Russian diplomatic staff would lead to effective protection against proscribed ill-treatment in practical terms, as it has not been shown that the aforementioned staff would be in possession of the expertise required for effective follow-up of the Kyrgyz authorities' compliance with their undertakings. Nor was there any guarantee that they would be able to speak to the applicant without witnesses. In addition, their potential involvement was not supported by any practical mechanism setting out, for instance, a procedure by which the applicant could lodge complaints with them or for their unfettered access to detention facilities (see, mutatis mutandis, *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, §§ 132-33, 3 October 2013).

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

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

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

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 (f) AND 4 OF THE CONVENTION

73. The applicant complained that his detention pending extradition had been unlawful in violation of Article 5 § 1 (f) of the Convention, and that no procedure to challenge the lawfulness of the prosecutor's detention order had been available to him, in violation of Article 5 § 4 of the Convention.

74. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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. Pecuniary damage

76. The applicant claimed 773,200 Russian Roubles (RUB) in respect of pecuniary damage. This sum comprised: (a) the income that he could have earned during the twelve months in which he had been deprived of his liberty, in the amount of RUB 660,000; (b) the cost of the rent that his relatives had paid for his workshop for six months, while he had been in custody, in the amount of RUB 60,000; and (c) the cost of his professional equipment, which had been sold by his relatives to pay for the workshop rent, in the amount of RUB 53,200.

77. The Government submitted that there was no connection between the pecuniary damage claimed by the applicant and the alleged violation of Article 3 of the Convention. Rather, his claim was connected with the alleged unlawfulness of the criminal charges against him.

78. The Court does not discern any causal link between the potential violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Non-pecuniary damage

79. The applicant claimed compensation for non-pecuniary damage and asked the Court to determine the amount of the award which "would be reasonable and appropriate to the level of suffering from taking out a year of his life, his liberty, his relationship and professional life".

80. The Government reiterated that they did not consider the applicant to be a victim in the meaning of the Convention. Should the Court decide otherwise, the fact of finding a violation would in itself constitute sufficient just satisfaction.

81. The Court considers that its finding that the applicant's extradition, if carried out, would breach Article 3 of the Convention constitutes sufficient just satisfaction.

C. Costs and expenses

82. The applicant also claimed 6,800 Euros (EUR) for legal costs incurred before the domestic courts and EUR 3,200 and RUB 24,300 for costs and expenses incurred before the Court.

83. The Government submitted that the applicant had not shown that the payments had actually been made and had been necessary and reasonable.

84. 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 – after exclusion, *inter alia*, of expenses related to the applicant's detention which formed the subject of the complaints declared inadmissible by the Court – the sum of EUR 3,800 covering legal costs in the domestic proceedings; and the sum of EUR 2,500 covering legal costs and EUR 487 covering postal expenses in the proceedings before the Court. Thus the sum of EUR 6,787, covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant on that amount, is to be paid to the representative's bank account.

D. Default interest

85. 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.

IV. RULE 39 OF THE RULES OF COURT

86. 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.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that, if the decision to extradite the applicant to Kyrgyzstan were to be enforced, there would be a violation of Article 3 of the Convention;

3. *Holds* that its finding made under Article 3 of the Convention constitutes sufficient just satisfaction as regards the claim for compensation for non-pecuniary damage;

4. *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, EUR 6,787 (six thousand seven hundred and eighty-seven euros) plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement and paid to the representative's bank account;
   (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;

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

6. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of

the proceedings not to extradite the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 24 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President