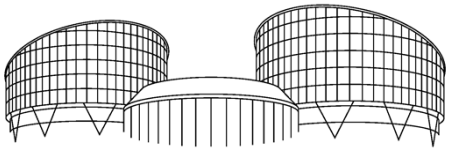

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF KHASANOV AND RAKHMANOV v. RUSSIA

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

JUDGMENT

Art 3 • Extradition • No real individual risk of ill-treatment in case of extradition of ethnic Uzbeks to Kyrgyzstan • Three-tier *ex nunc* risk assessment of situation in destination country, in general and in respect of the group in question, and of individual circumstances • *Ex nunc* principle constituting a safeguard where significant time elapsed between the domestic decisions and the Court's examination of an Article 3 complaint • Risk assessment essentially factual and amenable to revision by the Court in the light of changing circumstances • Kyrgyzstan's current general situation not warranting a total ban on extraditions • No basis for concluding that ethnic Uzbeks constituted a group still systematically exposed to ill-treatment • Applicants' individual circumstances duly considered by the domestic courts

STRASBOURG

29 April 2022

This judgment is final but it may be subject to editorial revision.

In the case of Khasanov and Rakhmanov v. Russia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President,*
Jon Fridrik Kjølbro,
Síofra O'Leary,
Yonko Grozev,
Ksenija Turković,
Ganna Yudkivska,
Aleš Pejchal,
Faris Vehabović,
Dmitry Dedov,
Carlo Ranzoni,
Pauliine Koskelo,
Tim Eicke,
Lətif Hüseynov,
Lado Chanturia,
Raffaele Sabato,
Anja Seibert-Fohr,
Ana Maria Guerra Martins, *judges,*

and Johan Callewaert, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 20 January 2021 and 9 February 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 28492/15 and 49975/15) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Kyrgyz nationals, Mr Turdyvay Urunbayevich Khasanov and Mr Shavkatbek Salyzhanovich Rakhmanov ("the applicants"), on 15 June and 11 October 2015 respectively. Having originally been designated by the initials T.K. and S.R. in the proceedings before the Chamber of the Third Section, the applicants subsequently requested that their names be disclosed and that the anonymity and confidentiality previously granted under Rule 33 and Rule 47 § 4 of the Rules of Court be lifted.

2. The applicants were represented by Ms N. Yermolayeva, Mr K. Zharinov, Ms D. Trenina and Ms E. Davidyan, lawyers practising in Moscow. The Russian Government ("the Government") were initially represented by Mr G. Matyushkin and Mr M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, and later by their successor in this office, Mr M. Vinogradov.

3. The applicants, relying on Article 3 of the Convention, alleged that they would be exposed to a real risk of ill-treatment on account of their Uzbek ethnic origin in the event of their extradition to Kyrgyzstan.

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

5. The applications were allocated to the Third Section of the Court (Rule 52 § 1). On 16 June 2015 and 10 March 2016 respectively, the Government were given notice of the above-mentioned complaints under Article 3 of the Convention.

6. On 15 October 2019 a Chamber of the Third Section, composed of Paul Lemmens, President, Helen Keller, Dmitry Dedov, Alena Poláčková, María Elósegui, Gilberto Felici, and Erik Wennerström, judges, and Stephen Phillips, Section Registrar, delivered its judgment. The Chamber unanimously joined the two applications, declared them admissible and held by five votes to two that there would be no violation of Article 3 of the Convention in the event of the applicants' extradition to Kyrgyzstan. Two separate opinions by Judges Keller and Elósegui were annexed to the judgment.

7. By a letter of 7 February 2020, the applicants requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. The panel of the Grand Chamber granted the request on 15 April 2020.

8. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

9. The applicants and the Government each filed further written observations on the merits (Rule 59 § 1).

10. A hearing took place in public in the Human Rights Building, Strasbourg, on 20 January 2021; on account of the public-health crisis resulting from the Covid-19 pandemic, it was held via videoconference. The webcast of the hearing was made public on the Court's Internet site on the following day.

There appeared before the Court:

(a) *for the Government*

Mr M. GALPERIN, Representative of the Russian Federation to the European Court of Human Rights, *Agent*,
Mr P. SMIRNOV,
Ms O. OCHERETYANAYA,
Ms Z. BEREZA,
Mr S. GRIGORENKO,
Mr S. KLYKOVSKIY,

Ms O. ZINCHENKO,
Ms K. DZHABBAROVA, *Advisers;*

(b) *for the applicants*
Ms N. YERMOLAYEVA,
Mr K. ZHARINOV, *Counsel*.

The Court heard addresses by Mr Galperin, Ms Yermolayeva and Mr Zharinov and the replies given by them to the questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicants are Kyrgyz nationals of ethnic Uzbek origin. The circumstances of their case may be summarised as follows.

A. Events of June 2010 in southern Kyrgyzstan

12. According to various international reports, in June 2010 intercommunal violence in the provinces of Osh and Jalal-Abad in southern Kyrgyzstan left more than 400 people dead, 2,000 wounded and thousands displaced internally and externally, and caused extensive damage to property. This region is home to sizeable Uzbek communities – around 14% of Kyrgyzstan's overall population – living in the historic urban and rural centres, and growing numbers of Kyrgyz residents who have migrated from rural areas. The size of ethnic Uzbek communities in the major cities of the Osh and Jalal-Abad provinces ranges from one-fifth to half of the population. The 2010 ethnic clashes took place against the background of the political instability following the overthrow of President Kurmanbek Bakiyev in April 2010 and persisting social and political tensions created by the post-Soviet territorial and ethnic division between Kyrgyzstan and the neighbouring Uzbekistan.

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

13. Mr Khasanov ("the first applicant") was born in 1957. Until 2010 he had been living in Osh, Kyrgyzstan. He arrived in Russia in July 2010.

14. On 13 September 2010 criminal proceedings were instituted against the first applicant in Kyrgyzstan on charges of aggravated misappropriation of approximately 18,500 euros (EUR). It was alleged that, as the managing director of a private company, he had received money from four other companies in business transactions but had spent the sums in question on his personal needs.

15. On 13 November 2010 he was charged *in absentia*. The relevant part of the notification of the charges stated the following:

> "Turdyvay Urunbayevich Khasanov, between 23 May 2008 and 5 November 2009, acting as the managing director of Altyn Alco LLC and taking advantage of his official position, in the course of his business relations with Ysabay and K LLC received 726,366 [Kyrgyz] som from its managing director, S. [He also received money] from a number of sole proprietors [private entrepreneurs]: A. – 195,000 som, S. – 87,027 som, B. – 49,415 som, A. – 22,957 som, amounting to 1,080,765 som in total, which he did not record and which he spent on his personal needs."

16. The Kyrgyz authorities subsequently ordered the first applicant's pre-trial detention and issued an international search-and-arrest warrant bearing his name.

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

1. Extradition proceedings

18. On 30 July 2013 the Kyrgyz prosecution authorities requested the first applicant's extradition on the above-mentioned charges. The request contained various assurances that he would be treated properly, including (a) guarantees against torture and cruel, inhuman or degrading treatment or punishment; (b) no political or discriminatory grounds for prosecution; and (c) every opportunity to defend himself and have access to a lawyer. On 5 February 2014 the Kyrgyz authorities extended the assurances by adding that the applicant would receive visits from Russian diplomatic staff at his places of detention after the transfer.

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

> "The Prosecutor General's Office of the Kyrgyz Republic has provided the necessary assurances in respect of [the applicant's] rights, including the absence of persecution on ethnic grounds, and guarantees against torture and other prohibited treatment and punishment.
>
> At the same time, the recent practice of the European Court of Human Rights demonstrates the critical attitude of the Court to the extradition of individuals of 'non-title' (нетитульная) ethnic origin to Kyrgyzstan on account of their vulnerability and the risk of prohibited treatment.
>
> In Mahmudzhan Ergashev v. Russia the European Court, ruling in favour of the applicant, indicated that [the assurances] given by the authorities of the Kyrgyz Republic, by themselves and in the absence of a monitoring mechanism, were insufficient to protect [an individual] from prohibited treatment.

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

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

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

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

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

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

24. On 4 February 2015 the Presidium of the Supreme Court of the Russian Federation, sitting as a supervisory court, annulled the previous judgments and remitted the case for reconsideration. The Presidium noted that the Regional Court had relied on the Court's case-law and the migration authorities' characterisation of the situation in Kyrgyzstan as "complex", but considered that the lower courts' conclusions were based on a general

description of the situation without any individual assessment of the risks faced by the first applicant. The relevant part of its decision read as follows:

> "A court assessing the risk of a human rights violation must not only study the general human rights situation in the requesting State, but also weigh the specific circumstances of the case, which might in their totality demonstrate the presence or absence of serious grounds to believe that a person might be subjected to [cruel] treatment or punishment.
>
> The law should be interpreted as prescribing that a court assessing extradition-related issues needs to consider the statements of the individual [concerned], information from the Ministry of Foreign Affairs on the human rights situation in the requesting State, the assurances provided by the requesting State, as well as other documents and material. ...
>
> The material in the case file demonstrates that [the first applicant] is accused of a crime that did not have an ethnic or political character and was committed between 2008 and 2009, well before the events of June 2010.
>
> In his statements to the Russian authorities on 11 July 2013 [the first applicant did not claim that he had suffered persecution on political or other grounds or that he had arrived in Russia with a view to seeking asylum.]
>
> These statements, which could have influenced the [Regional Court's] conclusions, were not examined.
>
> Moreover, [the Regional Court] did not duly assess the information from the Prosecutor General's Office ... on the assurances provided by the competent authorities of the Kyrgyz Republic that Russian diplomatic staff would have access to the place of [the applicant's] detention.
>
> The trial court, in setting aside the extradition decision, referred to the migration authorities' report, but only to the part describing the political, social and economic situation in Kyrgyzstan as 'complex', and neglected the other part, which listed the measures adopted by the government of Kyrgyzstan in order to enhance respect for human rights and secure the rights of ethnic minorities."

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

> "By a letter of 21 August 2013 the Prosecutor General's Office of Kyrgyzstan guaranteed that [the first applicant] would be ... provided with all the facilities for his defence, including the assistance of lawyers, that he would not be subjected to torture, ill-treatment or other inhuman or degrading treatment or punishment and that the extradition request did not have the aim of persecuting him on political or racial grounds, or on the basis of ethnicity or religious or political views. On 5 February 2014 additional assurances were provided that the Prosecutor General's Office of Kyrgyzstan

would ensure the access of Russian diplomatic staff to [the first applicant] at the place of his detention ... Contrary to the complaints, there are no grounds to doubt the assurances provided by the Kyrgyz authorities...

The court is mindful of the European Court's position that the general situation in a requesting State may not be the [sole] ground for a total ban on extraditions to that State.

The analytical materials of the Ministry of Foreign Affairs demonstrate that Kyrgyzstan respects its international obligations.

The material in the case file demonstrates that [the first applicant] is charged with committing an economic crime of a common criminal nature in 2008 and 2009 in Kyrgyzstan, [a crime] which has no political or ethnic character and is not related to the events of June 2010.

In his statement of 11 July 2013 [the first applicant] did not argue that he was being persecuted in Kyrgyzstan [on any ground] ... He did not justify his stay in Russia by any intention to seek asylum in connection with [any] persecution ...

Accordingly, no grounds have been established which could prevent [the first applicant's] extradition, under international treaties or Russian legislation. ..."

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

2. Refugee status proceedings

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

28. On 20 November 2013 the Oryol Regional Department of the Federal Migration Service dismissed the application. In particular, the Regional Department referred to (1) the absence of any allegations of past or current ill-treatment on the part of the applicant or his relatives residing in Kyrgyzstan, (2) the applicant's official statements that he had never participated in political or religious organisations, (3) his cancellation of his permanent residence in Kyrgyzstan five months after his arrival in Russia, (4) the fact that the initial questioning in his criminal case had taken place in May 2010 and that he had concealed that fact in one of the migration interviews, (5) his description of the June 2010 events in only vague and general terms without any specific details relating to his own situation, and (6) the fact that in his first interview in Russia he had expressly stated that he did not intend to seek asylum in Russia. Accordingly, the Regional Department concluded that the applicant's arrival in Russia had not been related to the events of June 2010 and had been a strategy to avoid criminal prosecution for economic crimes.

29. On 15 January 2014 the Federal Migration Service endorsed the lower authority's analysis and rejected the application in a final administrative decision.

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

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

C. Application no. 49975/15 (*Rakhmanov v. Russia*)

32. Mr Rakhmanov ("the second applicant") was born in 1986. Until 2010 the second applicant had been living in Suzak, Jalal-Abad Region, Kyrgyzstan. He arrived in Russia in January 2011.

33. On 24 July 2012 the second applicant was charged *in absentia* with violent crimes related to the events of June 2010 (see paragraph 12 above), in particular illegal purchase and carriage of firearms and explosive substances, committed as part of an organised criminal group, participation in violent mass riots involving arson, destruction of property and the use of firearms and explosive substances and devices, murder of individuals by means entailing danger to the public and particular cruelty, and based on ethnic hatred, committed as part of an organised group, violent aggravated robbery with the use of weapons, committed as part of an organised group, as well as intentional destruction of property, and causing serious damage by way of arson or another means entailing danger to the public. According to the charges, the crimes were ethnically motivated and directed against people of Kyrgyz ethnic origin.

34. The relevant part of the notification of the charges stated the following:

> "[The second applicant], having a criminal intent, joined a criminal group organised by A.S. and U.A. in order to commit murders, robberies and destruction of property based on ethnic hatred.
>
> In order to commit the above-mentioned crimes, the group, joined by [the second applicant], illegally purchased, kept and carried firearms, knives and iron reinforcements. Moreover, they also produced and carried bladed sticks 1.5 metres long, and bottles containing a flammable substance ...
>
> Furthermore, while continuing to commit crimes, on 12 June 2010 [the second applicant], together with A.S. and U.A., at the 564 km point on the Bishkek-Osh highway, which is of strategic importance for the Kyrgyz Republic, in the vicinity of the Sanpa cotton-processing plant situated in Topurak-Bel in the Suzakskiy district, spilt crude oil and scattered rubble down the road and blocked it with a tractor and other agricultural machinery. These actions created particular obstacles for vehicles going down the highway.
>
> Thus, [the second applicant], together with other members of his group, actively participated in violent riots, arson and destruction of property based on ethnic hatred, attacked drivers and passengers of vehicles passing down the highway, and robbed them ...
>
> [The second applicant], continuing to commit crimes, on 12 June 2010, in conspiracy with the criminal group, using firearms, stopped vehicles going down the highway with a number of Osh residents as passengers: K.M. and K.A. There were also residents of the Bazar-Korgonskiy region: A.M., K.N., M.A., Z.M. and K.S. They violently took them out of their cars, beat them up in a particularly cruel manner with bladed sticks

and iron reinforcements, and stabbed them in different parts of their bodies. Gunshot wounds were caused to A.M., K.N., M.A., Z.M. and K.S.

The victims K.M., A.M., K.N., M.A., Z.M. and K.S. died immediately of the wounds sustained. K.A. died in the city hospital of Jalal-Abad. ...

[The subsequent section contained details of the victims' post-mortem reports.]

Furthermore, the criminal group, joined by [the second applicant], continuing to commit crimes, stopped vehicles going down the highway, threatening them with firearms, explosive substances and devices (bottles containing a flammable substance), and robbed the drivers and passengers.

As a result, the vehicle U [costing 4,000 som] ... was completely destroyed with stones, sticks and iron reinforcements ...

Furthermore, the vehicle M [costing 237,500 som] was plundered and disassembled, which caused [the company that owned it] ... pecuniary damage. ..."

35. The Kyrgyz authorities subsequently ordered the second applicant's pre-trial detention and issued an international search-and-arrest warrant bearing his name.

36. On 15 April 2014 the applicant was apprehended in Russia; subsequently, his detention was ordered and extended by the Russian courts. He was released on 15 October 2015 and currently resides in Elektrogorsk, Moscow Region.

1. Extradition proceedings

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

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

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

40. On 31 August 2015 the Belgorod Regional Court dismissed the second applicant's complaint, rejecting his allegations of a risk of ill-treatment. Referring to the practice of the Court and the United Nations (UN) Human Rights Committee, the Regional Court stressed that besides the general characterisation of the situation in a given country, an individual alleging the existence of a real risk of ill-treatment had to substantiate it with regard to his personal circumstances. The Regional Court took due note of the international reports presented by the applicant's representative but

concluded that the applicant had failed to prove the existence of any individualised risks. The relevant part of its decision read as follows:

> "[The migration authorities refused the second applicant's requests for refugee status.] In particular, the ... decisions noted that at the beginning of 2011 [the second applicant] left Kyrgyzstan for Russia to seek employment and not for the purpose of seeking asylum ... [The second applicant] has not provided convincing arguments supporting his fear of persecution in his country of origin ...
>
> [The second applicant's] arguments concerning the 'falsification' of evidence in the criminal case file by the law-enforcement authorities of Kyrgyzstan are devoid of any proof and contradict the principle of mutual recognition of official documents between [Contracting States] ...
>
> The court takes into account the written assurances given by the foreign State ... [and the] application of such assurances should be considered a reliable instrument against prohibited treatment [, and this] corresponds to the requirements of international law.
>
> In rejecting the lawyer's arguments ... concerning the widespread practice of ill-treatment of ethnic Uzbeks in Kyrgyzstan, the court notes the following ...
>
> The case material demonstrates that [charges] against [the second applicant] relate to acts against public order, life and health.
>
> His criminal prosecution – contrary to his and his lawyer's statements – does not stem from a State policy or from persecution by the Kyrgyz authorities of certain groups of individuals, including ethnic Uzbeks.
>
> The court takes into consideration the arguments and documents submitted by [the second applicant's] defence, including extracts from [the reports of Amnesty International and Human Rights Watch], which indicate that torture is used in Kyrgyzstan against accused persons and that ethnic Uzbeks who are accused [in connection with the 2010 events] constitute a vulnerable group.
>
> However, this circumstance alone cannot serve as a sufficient basis for refusing [the second applicant's extradition], for the following reasons.
>
> [Fighting impunity for criminal acts is a cornerstone principle of international cooperation in criminal matters.]
>
> During the interview of 15 April 2014 after his arrest in Russia, [the second applicant] stated that until August 2010 he had resided in the village of Suzak ... In June 2010 'young Uzbeks from our village only blocked the road to the village, while the Kyrgyz tried to take over our village Suzak, but the guys did not let them do it. I did not take part in all this. I am not being persecuted on political grounds.'
>
> In court [the second applicant] stated that he had not engaged in political or civic activities in Kyrgyzstan.
>
> The above demonstrates that ... the criminal prosecution of [the second applicant] is related to the commission of socially dangerous acts and not to discrimination on ethnic grounds ...
>
> [Article 3 of the Convention Against Torture requires an examination] not only of the existence of grave and mass human rights violations, but also of a key question – whether there are individual risks of torture or other prohibited treatment ... This risk must be sufficiently real.

> [The UN Committee Against Torture in its decisions has stated that the mere existence of mass and grave violations of human rights cannot in itself serve as the ground for concluding that a person risks ill-treatment on returning to a particular country. There must be other information giving ground for believing that the person faces a personal risk. This risk must not be speculative, but predictable, personal and real.]
>
> As regards the general situation in a country the European Court of Human Rights has stated that certain consideration should be given to recent reports of [international NGOs]. However, the sole possibility of ill-treatment due to the unstable situation in the receiving country may not lead to a violation of Article 3.
>
> When the sources available to the Court only describe the general situation, specific allegations of an applicant require confirmation by other proof in every case.
>
> Such proof has not been presented by [the second applicant] and his lawyer to the court. ...
>
> Having regard to the above conclusions and being guided by the provisions of international treaties and their interpretation by the [treaty bodies], the court concludes that the available material does not demonstrate the existence of an individual risk of ill-treatment of [the second applicant] in the event of his extradition. ..."

41. On 14 October 2015 an appeal lodged by the second applicant was dismissed by a final decision of the Supreme Court of the Russian Federation. The Supreme Court observed that the Kyrgyz authorities had provided relevant assurances regarding the applicant's proper treatment (see paragraph 37 above) and that the lower court had been correct in considering those assurances to be a reliable mechanism against treatment prohibited by international law.

2. Refugee status proceedings

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

43. On 3 July 2014 the Belgorod Regional Department of the Federal Migration Service refused the application. In particular, the Regional Department referred to (1) the second applicant's repeated travel to and from Kyrgyzstan after June 2010 and his obtaining a new passport in Kyrgyzstan several months after arriving in Russia, (2) the fact that all nine members of his close family still resided in their native village in the south of Kyrgyzstan, were financially dependent on the applicant, and had never alleged any persecution, and (3) the fact that he had never participated in political, civil or religious organisations. Accordingly, the Regional Department concluded that the applicant had arrived in Russia for economic reasons and as a strategy to avoid criminal prosecution in his home country.

44. On 23 September 2014 the Federal Migration Service upheld the lower authority's conclusions and rejected the application in a final administrative decision. The Federal Migration Service emphasised that the second applicant would benefit from the monitoring mechanism of the Russian diplomatic services in Kyrgyzstan.

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

46. On 16 January 2015 the applicant's complaint was dismissed by the Basmannyy District Court of Moscow. The judgment was upheld on appeal on 8 June 2015 by the Moscow City Court.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law and practice

47. A summary of the domestic law concerning extraditions which was applicable at the relevant time was provided in the case of *Savriddin Dzhurayev v. Russia* (no. 71386/10, §§ 70-75, ECHR 2013).

48. In its Ruling no. 11 of 14 June 2012 the Plenum of the Supreme Court of the Russian Federation provided guidance to the lower courts on the interpretation and application of the domestic and international norms in extradition cases. The relevant parts of the Ruling state the following:

> "...
>
> 11. Under Article 2 of the European Convention, as interpreted by the European Court of Human Rights, ... a person may not be extradited if a crime is punished by the death penalty under the laws of the requesting State, if that State does not provide assurances, which the Russian Federation would consider sufficient, that a death sentence will not be enforced. Such assurances may be legal provisions prohibiting the use of the death penalty in the requesting State, [or] assurances by the law-enforcement or other competent authorities ... that a death sentence will not be enforced.
>
> 12. The courts should consider that under Article 7 of the International Covenant on Civil and Political Rights, as interpreted by the UN Human Rights Committee, and under Article 3 of the Convention Against Torture ..., a person is not subject to extradition [either] when there are serious grounds for believing that the person may be subjected to torture in the requesting State [or] when that person may be subjected to inhuman or degrading treatment or punishment.
>
> The courts should be aware that under Article 3 of the European Convention, as interpreted by the European Court of Human Rights, inhuman treatment or punishment occurs when it was premeditated, applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. Degrading treatment or punishment exists, in particular, when it creates feelings of fear, anguish and inferiority.
>
> ...
>
> 13. Extradition may also be refused if exceptional circumstances disclose that it may entail a danger to the person's life and health on account of, among other things, his or her age or physical condition.
>
> 14. The courts should consider that under [the domestic legislation and] Article 3 of the Convention Against Torture ..., in cases concerning appeals against extradition authorisations, it is the duty of [the prosecution authorities] to prove that there are no serious grounds for believing that the person concerned may be sentenced to the death

penalty, subjected to ill-treatment or persecuted because of his race, religious beliefs, nationality, ethnic or social origin or political opinions.

Under Article 3 of the Convention Against Torture, as interpreted by the UN Human Rights Committee, in determining whether the above circumstances are present or absent the courts should assess both the general situation regarding human rights in the requesting State and the specific circumstances of the given case, which, viewed in their entirety, may disclose the existence ... of serious grounds for believing that a person might be subjected to inhuman or degrading treatment or punishment.

In this connection the courts may consider, for example, the statements of the person concerned and of any witnesses, the information about the state of human rights in the requesting State provided by the Ministry of Foreign Affairs, any assurances given by the requesting State, as well as documents and reports of international non-treaty and treaty bodies ... The courts should evaluate the claims of the person concerned against the entirety of the available evidence.

The courts should consider that the assessment given by international non-treaty and treaty bodies of the general situation with respect to human rights in the requesting State may change over time ...”

49. In Russia, prosecutors dealing with extradition requests are guided by the directives of the Prosecutor General. Directive 212/35 of 18 October 2008, which was in force at the material time, stated as follows, in so far as relevant:

“In order to ensure compliance with international obligations and the legislation of Russia on [extraditions] ..., [prosecutors] are ordered [as follows].

1.1. The organisation of activities for the enforcement of extradition requests ... is entrusted to the Main Directorate of International Cooperation of the Prosecutor General’s Office of the Russian Federation.

...

1.2.2. In the absence of grounds precluding extradition or transfer to an international court, [prosecutors] should ensure the detention of the arrested person for forty-eight hours.

1.2.3. [Prosecutors should] question the arrested persons on the reasons for their arrival in Russia, ... their nationality, their intention to apply for or the existence of refugee status on account of potential persecution in [the country of origin] ..., the circumstances and motives of their criminal prosecution ... and possible obstacles to extradition ...

1.2.4. [Prosecutors should] verify the existence and veracity of any grounds which could lead to the refusal of extradition ...

1.2.6. [Prosecutors should] take measures for the release of the persons from detention once any grounds precluding extradition are established. ...

1.6. The Main Directorate of International Cooperation [should]:

...

1.6.9. Analyse and summarise the legal practice on extradition issues ...

1.6.10. Provide [prosecutors] with information on the international instruments on extradition that are binding on the Russian Federation.”

B. International law

50. Extraditions between Russia and Kyrgyzstan are governed by the 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases ("the Minsk Convention"). Article 56 of the Minsk Convention imposes on the parties an obligation to extradite individuals for the purposes of criminal prosecution and/or serving a sentence.

Article 56 – Obligation to extradite

"1. The Contracting Parties, under the conditions laid down in this Convention, undertake to extradite to each other persons who are present in their territory, for the purpose of criminal prosecution or enforcement of a sentence.

..."

51. Articles 58 and 59 of the Minsk Convention prescribe the contents of extradition requests and the accompanying documents.

Article 58 – Extradition request

"1. The request shall include the following information:

(a) the names of the requesting and the requested bodies;

(b) a factual statement of the offences [for which extradition is requested], as well as the relevant provisions of the criminal law, including the applicable sentencing norms;

(c) the surname, first name and patronymic of the extradited person, his or her year of birth, nationality, place of residence or stay, and, if possible, a description of his or her appearance, a photograph, fingerprints and other personal details;

(d) information on the damage caused by the offence.

2. An extradition request for the purpose of criminal prosecution shall be accompanied by an authenticated copy of a detention order.

..."

Article 59 – Additional information

"If the information communicated by the requesting Party is incomplete, the requested Party may request the necessary supplementary information and fix a time-limit of up to one month. ..."

52. The above provisions are substantively comparable to Articles 1, 12 and 13 of the European Convention on Extradition of 1957.

Article 1 – Obligation to extradite

"The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order."

Article 12 – The request and supporting documents

"1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.

2. The request shall be supported by:

(a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;

(b) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and

(c) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality."

Article 13 – Supplementary information

"If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof."

III. INFORMATION ON THE SITUATION IN KYRGYZSTAN

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

54. The Grand Chamber also notes that a detailed account of recent reports was provided in the Chamber judgment in the present case (*T.K. and S.R. v. Russia*, nos. 28492/15 and 49975/15, §§ 39-54, 19 November 2019), and therefore – given the scope of the material examined – it will reproduce in the present judgment only the material and reports which have been published after the adoption of the Chamber judgment or which have not been covered previously. This information includes the material submitted by the parties and material obtained by the Court *proprio motu*.

A. United Nations human rights bodies

55. The UN Special Rapporteur on minority issues highlighted the following in his statement on his 6-17 December 2019 visit to Kyrgyzstan:

"... While Uzbeks represent more than 14% of the population, only 3 members of parliament are members of the Uzbek minority.

On the positive side, since the October 2015 elections, the Electoral law prescribes a 15% quota for minority representation on political party lists. Legal reforms aimed at

enhancing parliamentary representation have so far been timid and largely ineffective. While the above-mentioned quota at least symbolically ensured a degree of visibility for a handful of the 100 or so minority groups in the country, in practice I was informed this does not go very far however in terms in ensuring a proportional presence reflective of the [country's] diversity, or of being an effective form of political participation of most minorities.

...

Inter-ethnic relations in Kyrgyzstan, and particularly the relations between the majority ethnic Kyrgyz and the Uzbek minority following the 2010 events in Osh, remain fragile. There are several identified factors that could bring the level of inter-ethnic tension to a breaking point, such as the underrepresentation of minorities, the issue of minority languages in education and public service provision, cases of claimed unfair treatment by law enforcement and in the provision of public services, and issues relating to resource management, including water and land.

...

The 2010 conflict claimed the lives of more than 400 people, with more than two thirds of them being ethnic Uzbeks, and led to the destruction of thousands of houses, properties and businesses. Yet, there are concerns over the Government's response to this conflict, and in particular with regard to the investigations and the administration of justice for the serious violations committed at that time. Reports indicate that a significant number of criminal cases for murder as well as for destruction of property and robbery or theft remained suspended, and that the Government has not implemented programmes for the rehabilitation of victims and their families, including children who have been exposed to violence and destruction.

... 2016 data from the Supreme Court shows that approximately 60% of the extremism-related convictions concern members of minorities, with ethnic Uzbek representing 54%.

..."

56. On 23 April 2014 the UN Human Rights Committee stated the following in the Concluding observations on the second periodic report of Kyrgyzstan:

"14. While noting information provided during the dialogue, the Committee is concerned about reports concerning failure on the part of the State party to investigate fully, effectively and without discrimination, human rights violations committed during and in the aftermath of the June 2010 ethnic conflict in the south of Kyrgyzstan, including allegations of torture and ill-treatment, serious breaches of fair trial standards during court proceedings, including attacks on lawyers defending ethnic Uzbeks, and discrimination in access to justice based on ethnicity. The Committee is also concerned that the causes of this conflict were not fully addressed by the State party and may continue to persist (art. 2, 7, 9, 14, 26 and 27).

The State party should take effective measures to ensure that all alleged human rights violations related to the 2010 ethnic conflict are fully and impartially investigated, that those responsible are prosecuted, and that victims are compensated without any discrimination based on ethnicity. The State party should urgently strengthen its efforts to address the root causes of obstacles to the peaceful coexistence between different ethnic groups on its territory and to promote ethnic tolerance and mutual trust.

15. While welcoming legislative and administrative measures aimed at the prevention and eradication of torture, including amendments to the Criminal Code, the Committee remains concerned about the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty for the purpose of extracting confessions, particularly in police custody; the number of deaths in custody and the fact that none of the cases reported to the Committee led to any conviction; the State party's failure to conduct prompt, impartial and full investigation of deaths in custody; and the lack of prosecution and punishment of perpetrators of torture and ill-treatment and compensation of victims. The Committee also remains concerned about allegations of torture and miscarriages of justice in the case of Azimjan Askharov (arts. 6, 7 and 10).

The State party should urgently strengthen its efforts to take measures to prevent acts of torture and ill-treatment and ensure prompt and impartial investigation of complaints of torture or ill-treatment, including the case of Azimjan Askarov; initiate criminal proceedings against perpetrators; impose appropriate sentences on those convicted and provide compensation for victims. The State party should take measures to ensure that no evidence obtained through torture is allowed to be used in court. The State party should also expedite operationalization of the National Centre for the Prevention of Torture through providing the necessary resources to enable it to fulfil its mandate independently and effectively."

57. On 25 February 2020 the UN Human Rights Committee received the third periodic report submitted by Kyrgyzstan under Article 40 of the International Covenant on Civil and Political Rights. The report indicated the following:

"124. The Constitution provides that no one may be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Every person deprived of liberty has the right to be treated humanely and to have his or her dignity respected (art. 22).

125. On 1 January 2019, the new Criminal Code and new Code of Criminal Procedure entered into force. They strengthen the fundamental safeguards against torture during the police custody and preliminary investigation phases.

126. The maximum penalty for the offence of torture, as established in article 143 of the Criminal Code, has been lowered by 5 years. Courts may now impose a penalty of deprivation of liberty for a maximum of 10 years.

...

136. An independent State body, the National Centre for the Prevention of Torture, was established in 2012 to prevent torture and ill-treatment. Between 2014 and 2018, the Centre carried out over 4,000 monitoring visits. To date, most instances of torture have been found to have occurred before the suspect was taken into custody, for the purpose of extracting a confession.

137. There are a number of impediments to the effective operation of the Centre. Over the four years between 2014 and 2018, 46 cases of obstruction of the Centre's work were identified, 3 of which led to the initiation of criminal proceedings (in 2014, 2015 and 2017). While obstruction of and interference in the work of the Centre's staff are prohibited by law, such violations continue in practice.

...

139. Between 2014 and 2018, the procuratorial authorities instituted criminal proceedings in relation to only 28 complaints of torture and ill-treatment, which constituted 3 per cent of the total number of complaints addressed to the Centre.

140. Torture was made a specific criminal offence in 2003, but not a single person was prosecuted under the relevant article until 2012.

141. Between 2012 and 2018, the courts found 18 officials guilty of torture in criminal cases. Of these officials, 14 worked for the internal affairs agencies and 4 worked for the State Penal Correction Service.

142. Punishment was waived in respect of six internal affairs officers, as the statute of limitations for criminal prosecution had expired, the acts in question having been committed before July 2012 (when the penalty for torture was increased). The remaining 12 persons were sentenced by the courts to between 7 and 11 years' deprivation of liberty. ..."

A table indicated the number of registered torture complaints each year: 2012 – 371, 2013 – 265, 2014 – 220, 2015 – 478, 2016 – 435, 2017 – 418, and 2018 – 377.

B. European Union

58. The European Union's 2019 Annual Report on Human Rights and Democracy mentioned the following in particular in its country update on Kyrgyzstan:

"The overall human rights situation [in 2019] remained stable and is considered as the most advanced in the region. The government remained committed to its human rights agenda and adopted relevant documents for its implementation, e.g. the National Human Rights Action Plan 2019-2021. Implementation of judiciary reform, to which the EU contributes through development assistance, has been listed among priorities of the leadership. Five new codes (among which the criminal code and the criminal procedure code) entered into force on 1 January 2019, providing new tools and reducing arbitrary decisions. ... There are still persisting shortcomings on specific human rights issues, including continued impunity for the use of torture, widespread corruption ..., lack of independence and professionalism of the judicial system and general weakness of the rule of law. ... No measures have been taken to address the prominent case of Azimjan Askarov, notwithstanding strong international advocacy (including the UN Human Rights Committee)."

C. International non-governmental human rights organisations

59. Amnesty International's 2019 report on "Human Rights in Eastern Europe and Central Asia" stated the following in the section on Kyrgyzstan:

"On 1 January, a new Criminal Code and Criminal Procedural Code came into effect. These Codes reinforced guarantees against torture and other ill-treatment by expressly outlawing torture and other ill-treatment and excluding as inadmissible any evidence obtained through torture and other ill-treatment, clarifying when police detention starts and thus ensuring that detainees have the right to a lawyer from the actual moment of arrest. The new Criminal Procedural Code also specified that once a torture complaint has been made medical evidence must be gathered within 12 hours.

NGOs, however, continued to receive reports of torture and other ill-treatment and ethnic profiling by the police. On 20 November, an ethnic Uzbek man was arbitrarily detained by police officers from Ak-Burinsk police station in Osh and allegedly beaten

to force him to confess to stealing two mobile phones. He was in the car of a lawyer who worked for the human rights group Positive Dialogue when police officers stopped the car and detained him without explaining why. Two further police officers arrived and showed some papers in Kyrgyz, which the detained man could not understand, but did not allow the lawyer to explain the contents to him. The lawyer later located the man at Ak-Burinsk police station where he told her that he had been beaten. The lawyer ensured that the man was taken to a hospital to document his injuries. The doctor agreed to examine him in private, away from the police officers who had beaten him, but refused to fill in a form documenting the injuries in accordance with the Istanbul Protocol. The man has lodged a complaint about the alleged torture.

...

Kyrgyzstan had still not carried out full and impartial investigations into the human rights violations that occurred during and following the ethnic violence in June 2010 in Osh following which ethnic Uzbeks were targeted disproportionately for prosecution."

60. Human Rights Watch's "World Report 2020" indicated among other issues the following:

"Despite international calls for the release of rights defender Azimjon Askarov, a regional court upheld his life sentence in July. Askarov's lawyers have appealed his case, which they brought in light of changes to Kyrgyzstan's criminal code, to the Supreme Court. Members of civil society who have visited the 68-year-old Askarov say he has several health problems and no access to a doctor outside the prison where he's being held. In October, Askarov wrote an open letter complaining about prison conditions, including arbitrary use of solitary confinement and limitations of family visits. In a separate case, Askarov was named in a lawsuit for failing to pay 'moral compensation' to the victims of his alleged crimes.

Victims continue to wait for justice nine years after June 2010 interethnic violence, which left hundreds killed and thousands of homes destroyed. Ethnic Uzbeks were disproportionately affected.

...

Torture by law enforcement officials continues, impunity for which is the norm. According to government statistics sent to the anti-torture group Voice of Freedom, 171 allegations of torture were registered in the first half of 2019, though only one case had so far been sent to court. According to international and local groups, changes to Kyrgyzstan's criminal code in 2019 helped to strengthen protection against torture and increase punishments for perpetrators."

In a news update of 9 June 2020 entitled "Kyrgyzstan: Justice Elusive 10 Years On", Human Rights Watch stated:

"While horrific crimes were committed against both ethnic Uzbeks and Kyrgyz in June 2010, most of those who were killed or lost their homes in the mayhem were from the ethnic Uzbek community.

Kyrgyz authorities have held some people responsible for crimes committed during the June 2010 violence. According to government data published in 2017, 'Courts have considered 286 cases involving 488 persons' in relation to the June 2010 violence. However, most criminal investigations into crimes committed during the violence, nearly 4,000 of over 5,000 cases, according to government data published in 2017, have been suspended because the accused could not be identified or could not be found.

The Kyrgyz government has not acknowledged that ethnic Uzbeks disproportionately were the victims of attacks or that attacks on ethnic Uzbek neighborhoods were systematic. Human Rights Watch noted in 2012 that the vast majority of criminal cases in which the victims were ethnic Uzbeks had yet to be investigated.

...

Human Rights Watch also documented that the profoundly flawed criminal investigations and trials, mainly affecting the ethnic Uzbek minority, were marred by widespread arbitrary arrests and ill-treatment, including torture. Prosecutorial authorities refused to investigate torture allegations, and frequent physical attacks against defendants and their lawyers marred courtroom proceedings, Human Rights Watch found.

...

[T]he human rights organization, Bir Duino, cited official data to CERD showing that over 70 percent of the people criminally prosecuted in connection with the June 2010 violence were ethnic Uzbek. The group further noted that out of 105 people prosecuted for killings committed during the violence, 97 are ethnic Uzbek and 7 are Kyrgyz.

...

Ten years on, the ethnic Uzbek community in southern Kyrgyzstan retains an underlying sense of fear and insecurity, especially with respect to law enforcement and the judiciary. 'As far as the courts are concerned, and in terms of political representation, nothing has changed,' an ethnic Uzbek human rights defender in southern Kyrgyzstan told Human Rights Watch. As a result, 'it's very hard for me to do my work.' He asked not to be named for fear of repercussions.

...

Following his December 2019 visit to Kyrgyzstan, the UN special rapporteur on minority issues, Fernand de Varennes, said that ethnic relations in Kyrgyzstan 'remain fragile' and that factors including 'underrepresentation of minorities' and 'unfair treatment by law enforcement,' could "bring the level of inter-ethnic tension to a breaking point."

...

While some communities have found ways to move past the June 2010 violence, the Kyrgyz government still has a responsibility to acknowledge and provide accountability for past abuses.

..."

61. Freedom House indicated the following in its 2020 "Freedom in the World" report:

"Ethnic minority groups face political marginalization. Politicians from the Kyrgyz majority have used ethnic Uzbeks as scapegoats on various issues in recent years, and minority populations remain underrepresented in elected offices, even in areas where they form a demographic majority.

...

Defendants' rights, including the presumption of innocence, are not always respected, and evidence allegedly obtained through torture is regularly accepted in courts.

There are credible reports of torture during arrest and interrogation, in addition to physical abuse in prisons. Most such reports do not lead to investigations and convictions. Few perpetrators of the violence against the Uzbek community in southern Kyrgyzstan in 2010 have been brought to justice.

... Ethnic minorities – particularly Uzbeks, who make up nearly half of the population of the city of Osh – continue to face discrimination on economic, security, and other matters. Uzbeks are often targeted for harassment, arrest, and mistreatment by law enforcement agencies based on dubious terrorism or extremism charges. ..."

D. National and regional human rights organisations

62. In July 2019 the Coalition Against Torture in Kyrgyzstan stated the following in its submission to the 35th Session of the UN Universal Periodic Review (UPR) Working Group:

"Since independence, Kyrgyzstan has become a party to all UN treaties on the prohibition and prevention of torture and ill-treatment and these agreements have been integrated into national law. In 2003, torture was criminalized in domestic legislation. As part of measures to improve justice in the Kyrgyz Republic, from 1 January 2019, new Criminal and Criminal Procedure Codes were enacted, which strengthen the basic guarantees of freedom from torture during detention and increase the punishment for torture.

The Kyrgyz government has adopted an Action Plan to combat torture and implementation is underway through cooperation between government agencies, international and local non-governmental organizations, including the Coalition against Torture.

In recent years the Government of the Kyrgyz Republic showed affirming political [will] 'to change [the] situation for the better in the fight against torture'. However, these positive changes in this area are not enough. The practice of torture by law enforcement is still ongoing. Impunity for torture is the norm. This is evidenced by reports from bodies such as the Ombudsman, the NCTP and the research of the Coalition against Torture.

... [According to the] Index of ... torture and ill-treatment of persons detained in remand prisons (SIZOs) and temporary detention facilities (IVSs), ... 30 per cent [of] respondents stated that they had been subjected to unjustified physical force or torture by law [enforcement] bodies. ...

In 2018, a selective struggle against corruption, the increasing role of law enforcement agencies in the fight against extremism and terrorism and other factors had a negative impact and worsened the situation with torture. It is necessary to note that the number of criminal cases against torture have increased, but only a few have been prosecuted for these charges. This shows that one of the main reasons of preventing the eradication of torture is the impunity of torture acts.

A major obstacle to the eradication of torture is lack of adequate and effective investigation. A comparative analysis of the results of the consideration of torture complaints received by the prosecutor's office in the context of [the] increase in refusals to initiate criminal proceedings against alleged perpetrators indicates [a decline in the] effectiveness of investigating torture complaints. ...

In 2018, a joint study by the Coalition against Torture and the National Center for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment (NCTP) to asses[s] torture and ill-treatment of persons detained in remand prisons (SIZOs) throughout 2017 found that one in three of the 679 respondents (30.2%) stated that they had been subjected to unjustified physical force or violence during arrest and detention, figures which undoubtedly show the prevalence of torture in Kyrgyzstan.

For the period 2016-2018, the General Prosecutor's Office registered 1,140 allegations of torture and ill-treatment, of which 435 in 2016, 418 in 2017, and 377 in 2018. Thus, there are fewer complaints of torture. A reduction in the number of complaints of torture has also been noted by the Coalition against Torture: in 2016 the Coalition received 59 complaints of torture, in 2017 – 43, and in 2018 – 38 complaints. As a rule, this may be either the result of the effective steps taken by actors involved in the fight against torture, including human rights defenders, or else it may indicate a lack of trust in existing mechanisms of legal protection and fear of subsequent reprisals. ...

In the absolute majority of cases (94%), torture is used by operative officers of the internal affairs bodies in order to extract confessions. [see Annual Report of the National Center for Prevention of Torture for 2016, page 27]

...

In over a dozen decisions, the UN Human Rights Committee (HRC) recognized that Kyrgyzstan violated the right to freedom from torture under Article 7 of the ICCPR and recommended the state to take measures of redress and pay compensation to the victim.

...

V. NATIONAL PREVENTIVE MECHANISM

In 2012, a National Prevention Mechanism (NPM) was created, the functions of which were assigned to a new state body – the National Center for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NCTP). In July 2016, for the first time in 7 years of its operation, the NPM was fully staffed. The National Center received more than 900 complaints, authorities initiated 45 criminal cases, 28 of them under the Article 'Torture'. The National Center submitted 6 annual reports to the Parliament, 5 of which were reviewed by the Parliament and relevant recommendations were provided to the state bodies.

Obstruction of NPM activities

Over the past five years, 46 incidents of obstruction of NPM activities were recorded and 3 [sets of] criminal proceedings were initiated regarding these incidents. Currently, the prohibition of interfering [with] and obstructing of activities of the National Center's staff and members of the Coordination Council has been excluded from the new Criminal Code and the Code of Misconduct.

Currently, [the] Kyrgyz Parliament is sabotaging activities of the Coordinating Council of the National Center for Prevention of Torture.

Therefore, the governing body is paralyzed [in its ability] to take any meaningful actions including ... adopting [the] budget for 2019, plan[ning] monitoring visits and many others. In addition, the Parliament has not yet approved the Regulation on the formation of a Working commission on selection of members of the Coordinating Council of [the] NPM.

The National Center has no capability to fully operate because of insufficient funding. There is no opportunity for preventive visits because of lack of funding. In such circumstances, there is a risk of insufficient preventive visits."

At the same time, the submission did not suggest that ethnic Uzbeks currently faced a heightened risk of torture as compared to other groups of individuals.

63. In its submission to the third cycle of the UPR on Kyrgyzstan, considered on 20 January 2020, OPZO Spravedlivost Jalal-Abad Human Rights Organization stated:

> "Kyrgyzstan's recent history has been marred by inter-ethnic conflict with large-scale clashes taking place in June 2010. The causes of these conflicts are complex, with their roots in the historical and cultural differences between Kyrgyz and Uzbek, as well as actual and perceived socio-economic and political inequality between them. The investigatory process and the disproportionate prosecution of ethnic Uzbeks for criminal offences committed during the conflict demonstrated a pattern of discriminatory conduct by law enforcement agencies against ethnic Uzbeks during and after the conflict. As a result, the selective investigations and prosecutions which have since been conducted have disproportionately targeted Uzbeks and have resulted in few prosecutions of anyone else. Moreover, dozens of trials related to the June 2010 violence were seriously flawed due to violations of the defendants' rights from the time of detention through to conviction, including law-enforcement officials' use of torture on a widespread basis in their investigations, denial of the right to representation by a lawyer of the detainees' own choosing, or the right to consult with a lawyer in private.
>
> ... Kyrgyzstan has failed to establish an atmosphere of confidence and trust among ethnic minorities in the administration of justice and law enforcement. This hampers efforts to implement the rule of law and promote long-term stability which undermines all reconciliation efforts. For example, instead of initiating or setting up a mechanism to review all cases of persons convicted in connection with the June 2010 events, Kyrgyzstan has issued dozens of extradition requests for ethnic Uzbeks whom the authorities accuse of having organized or participated in the June 2010 conflict. Most of the persons subject to such extradition requests have fled to Russia. ...
>
> The Government of the Kyrgyz Republic had taken some measures to create a peaceful and inclusive society and promote tolerance, reconciliation and understanding between the Kyrgyz majority and the minority ethnic groups. Nevertheless, the development and actual implementation of [the] State Concept of Strengthening People's Unity and Interethnic Relations (2013) did not bring a measurable impact on inter-ethnic situation in the country."

64. In April 2020 the local NGO Bir Duino reported that in over 60% of cases, it was the relatives of victims of torture who applied to the NGO for assistance, because the victims themselves were serving sentences or being held in closed pre-trial detention facilities, and that 51% of the persons seeking its assistance were of ethnic Uzbek origin.

E. Functioning of the monitoring mechanism in Kyrgyzstan and the situation of persons extradited from Russia

65. The respondent Government provided the Grand Chamber with updated information on the functioning of the mechanism set up to monitor the assurances provided by the Kyrgyz authorities. The following section is based exclusively on their submissions and does not include the information

previously reproduced in the Chamber judgment (see paragraphs 55-60 of the Chamber judgment).

66. The Russian embassy in Kyrgyzstan, through its territorial units, carries out monitoring visits to extradited persons, relying on the provisions of the Convention, the CIS Convention on the Transfer of Sentenced Persons of 6 March 1998 and the Methodological Instructions issued for Russian diplomatic staff performing monitoring visits.

67. The above-mentioned Methodological Instructions ("the Instructions") have been developed through joint cooperation efforts between the Prosecutor General's Offices of the Russian Federation and Kyrgyzstan and the Ministry of Foreign Affairs of the Russian Federation. The Instructions set out the framework for monitoring visits to persons extradited from Russia who are detained pending trial or serving criminal sentences in Kyrgyzstan.

68. Where assurances have been provided, the monitoring mechanism extends to all persons extradited to Kyrgyzstan, irrespective of their ethnicity, of whether an application has been submitted to the Court or whether an interim measure has been indicated under Rule 39 of the Rules of Court. In order to assist the diplomatic staff in performing their duties, the annex to the Instructions contains an extensive presentation of the Court's case-law under Article 3 of the Convention concerning, *inter alia*, ill-treatment, conditions of detention and the provision of medical assistance to inmates.

69. According to information from the Russian diplomatic mission in Kyrgyzstan, in 2018 the mission's staff visited five persons and in 2019 three persons, with the assistance of the Kyrgyz Ministry of Foreign Affairs. No irregularities were observed during the visits. Currently, eight persons who have been extradited from Russia are serving sentences in Kyrgyzstan; however, owing to the COVID-19 pandemic, no visits were possible between February and September 2020.

70. In addition to the above information, the Russian Government provided statistical data obtained from the Kyrgyz authorities concerning the prosecution of extradited individuals. According to those data, in 2012 and 2013, out of 130 extradited individuals of all ethnicities, 69 had been convicted (20 of whom had been released on parole). In respect of the remainder, the criminal proceedings had been discontinued on various grounds. The information obtained through the monitoring mechanism includes specific examples of proceedings against four persons (three of whom were ethnic Uzbeks), who had been extradited prior to the creation of the mechanism. They had been either released on parole or granted an amnesty following their transfer to Kyrgyzstan; in one case, the criminal prosecution had been discontinued.

71. Lastly, according to information submitted by the Russian Prosecutor General's Office, between 2017 and 2020 eleven persons of Uzbek ethnic origin had been extradited to Kyrgyzstan, and there was no evidence that the

Kyrgyz authorities had failed to abide by their assurances or had violated the rights of those persons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

73. The Government contested that argument.

A. The Chamber judgment

74. In respect of the applicants' complaints, the Chamber considered that it was essentially required to follow the general principles that were well established in the Court's case-law (see paragraphs 77-81 and 99-101 of the Chamber judgment), and it focused on the application of those principles and the assessment of the facts.

75. It acknowledged that in certain contexts the fact that an individual belonged to a certain targeted group might entail a real risk under Article 3 of the Convention and that in judgments given between 2012 and 2015 the Court had concluded that in Kyrgyzstan ethnic Uzbeks charged with crimes related to the 2010 events constituted such a vulnerable group. However, the Chamber highlighted that the general situation in Kyrgyzstan had never been considered such as to create a real risk of ill-treatment in general for all individuals and that the previous judgments had been based on international reports prepared in the wake of the 2010 events. Having examined the period from 2015 to 2019, the Chamber found that the available international reports no longer supported the conclusion that ethnic Uzbeks constituted a vulnerable group facing a specific targeted risk of ill-treatment (see paragraphs 84-88 of the Chamber judgment).

76. Having reached the above conclusion, the Chamber proceeded to examine whether the applicants' case demonstrated the existence of individual real risks. It found that the relevant complaints had been appropriately considered by the domestic authorities and found that the applicants had failed to prove the existence of such risks (see paragraphs 93-96 of the Chamber judgment). Having expressly stated that that conclusion was sufficient to find that the Russian authorities had complied with their Convention obligations, the Chamber nonetheless found it appropriate to examine the assurances given by the Kyrgyz authorities and

the existing Russian-Kyrgyz joint monitoring mechanism for visits by Russian diplomatic staff to persons extradited to Kyrgyzstan and found them to be capable of mitigating any potential risk of ill-treatment (see paragraphs 97-108 of the Chamber judgment).

77. In the light of the above, the Chamber held, by five votes to two, that there would be no violation of Article 3 of the Convention in the event of the applicants' extradition to Kyrgyzstan.

B. The parties' submissions before the Grand Chamber

1. The applicants

78. The applicants, in their observations before the Grand Chamber, alleged that their extradition to Kyrgyzstan would be in violation of Article 3 of the Convention.

79. Relying on international material and the conclusions of the relevant monitoring bodies, the applicants argued that the narrative of international reporting from 2011 until the present moment demonstrated the persistence of grave human rights violations in the aftermath of the inter-ethnic clashes in 2011 and 2012, with ongoing acts of torture and ill-treatment, arbitrary detentions, and disproportionate targeting of Uzbeks in criminal prosecutions; the subsequent persistence of torture in criminal investigations, and the failure of the Kyrgyz authorities to conduct an effective investigation into the above-mentioned events in the period between 2013 and 2016; and the failure to bring justice to the victims, the impunity of the perpetrators, a potentially endemic ethnic bias, insecurity and fear in the Uzbek community and a lack of due process in the period between 2017 and 2020. The current situation of ethnic Uzbeks in Kyrgyzstan was characterised in terms of persistent tensions, political marginalisation, an absence of genuine equality, disproportionate criminal prosecutions on extremist charges, stereotyping, targeting and ethnic profiling.

80. The applicants maintained that, contrary to the Government's position and the Chamber's findings, they had not been prosecuted for acts of a "common criminal nature" and their prosecutions had been ethnically motivated and related to the June 2010 events. They further asserted that despite the relevant claims having been raised before the Russian authorities, they had been dismissed without sufficient reasons being given.

81. In respect of the first applicant, they argued that while the charges themselves related to events dating back to 2008, the criminal proceedings had not been initiated against him until 2010 and were in fact a strategy to force him to pay bribes and to extort his property. In respect of the second applicant, they submitted that the ethnic component of the charges against him could not be overlooked and that the charges related directly to the inter-ethnic clashes and ethnic bias in Kyrgyzstan. In the applicants' opinion, their prosecution was arbitrary and the charges were of a random nature.

82. Referring to the Court's judgments from the period 2012 to 2016, the applicants emphasised that the risk to ethnic Uzbeks prosecuted in Kyrgyzstan had long been recognised by the Court and that irrespective of the nature of the charges, they would be exposed to abuse on the sole basis of ethnicity. They further submitted that the available material demonstrated endemic bias and arbitrariness in criminal prosecutions, the increased risk of ill-treatment faced by ethnic Uzbeks, and the lack of effectiveness of the functioning of the national preventive mechanism. Accordingly, in their assessment they would face a high risk of ill-treatment due to their ethnicity in the event of their extradition to Kyrgyzstan.

83. Turning to the issue of assurances, the applicants maintained that the assurances given by the Kyrgyz authorities were incapable of creating due protection against torture. In support of their position, they pointed out that the assurances in their cases had been formulated in general and standardised terms lacking precision, and when assessed against the situation of systematic discrimination against and ill-treatment of Uzbeks in Kyrgyzstan, such assurances did not appear reliable. Referring to the case of *Khamrakulov v. Russia* (no. 68894/13, § 69, 16 April 2015), they alleged that the monitoring visits by the Russian diplomatic staff were at the discretion of the Kyrgyz authorities and that no proper procedural safeguards existed to ensure the effectiveness of such visits.

2. The Government

84. The Russian Government, in their observations before the Grand Chamber, endorsed the findings of the Chamber and emphasised the absence of risks for the applicants in the event of their extradition and the quality and reliability of the assurances given by the Kyrgyz authorities.

85. As regards the prohibition of torture and other ill-treatment of persons who were the subject of criminal prosecution, they stressed that the situation in Kyrgyzstan had changed significantly over the last ten years. In their assessment, the Kyrgyz Republic had demonstrated continuous commitment to upholding human rights by implementing a series of legal reforms and cooperating with international actors. Turning to the situation of ethnic Uzbeks, the Government stated that since 2010 the Kyrgyz authorities had been tackling the issue through continuing investigation and monitoring activities. They further pointed out that although international reports referred to existing tensions, such reports focused on the June 2010 events, the effectiveness of the authorities' reaction to those events and the impact on the Uzbek community, without paying due attention to the current state of affairs, or relied on hearsay reporting instead of established facts. The Government contended that discrimination against the non-Kyrgyz population had never occurred on a massive or systematic scale and that the current concerns focused predominantly on issues relating to the political representation of minorities.

86. The Government disagreed with the contention that concerns about the situation in Kyrgyzstan had worsened over time and noted that while the phenomenon of ill-treatment was unfortunately widespread, that fact alone did not preclude extraditions. They contended that States could not be reasonably expected to dispel any doubts with regard to the risk of ill-treatment following extradition, as that would create an excessive burden which could not be inferred from the Court's case-law.

87. Turning to the applicants' cases, the Government first asserted that the general situation in Kyrgyzstan had never been considered by the Court to be such as to prevent all removals to that country and that, in the light of the progress noted by international reports, there were no grounds to depart from that finding. In respect of both applicants, the Government asserted that they had failed to demonstrate the existence of individual circumstances giving rise to a risk of ill-treatment. They pointed out that the applicants had first applied for refugee status only after their arrest in the context of the extradition proceedings and that their conduct and submissions to the national authorities had been inconsistent. The Russian authorities had duly examined the applicants' claims and found them to be conflicting and unsubstantiated.

88. The Government lastly maintained that the assurances given by the Kyrgyz authorities, which had included specific guarantees of the applicants' rights, were reliable international-law obligations and that there were no reasonable grounds to doubt that the Kyrgyz authorities would not abide by the assurances in practice. In the Government's view, the quality and reliability of the assurances was further proved by the functioning of the monitoring mechanism ensuring visits by Russian diplomatic staff to extradited persons.

3. Third-party submissions

89. The International Commission of Jurists (ICJ) and the European Council on Refugees and Exiles made joint third-party submissions before the Grand Chamber. They addressed (1) the scope of *non-refoulement* obligations; (2) the use of diplomatic assurances; and (3) the legal framework and practice concerning extraditions from Russia and suspects' rights in Kyrgyzstan.

90. Referring to the principles established in the Court's case-law under Articles 2 and 3 of the Convention and highlighting the absolute nature of the prohibition of treatment contrary to Article 3 of the Convention, the third parties highlighted in particular the importance of the Court's close and rigorous scrutiny of arguable claims and the need to assess all available contextual and case-specific evidence, including information obtained *proprio motu*, taking into consideration the vulnerable position of asylum-seekers. They maintained that it was incumbent on the Court to satisfy itself that the national authorities had conducted a real and effective inquiry into a person's situation and that their conclusions had to be adequate

and sufficiently supported by the available material. In their opinion, any doubt as to the existence of a substantiated risk of prohibited treatment had to be dispelled and extra caution should be exercised in that assessment.

91. Turning to the use of assurances, the third parties referred to the critical statements by the UN Human Rights Council, the Committee against Torture, the Special Rapporteur on Torture and the Human Rights Committee, all of which discouraged reliance on assurances, even when supported by monitoring mechanisms, and permitted their consideration as a relevant factor only with strong reservations. In respect of the principles developed by the Court, they maintained that assurances should not only be tested against reliable and individualised information, but should also be examined in the light of the context in which they were provided. In the third parties' opinion, assurances had to be supported by an independent monitoring mechanism with unfettered and confidential access to the transferred person, and the domestic authorities had to collaborate with such a mechanism in good faith.

92. With regard to the legal framework and practice concerning extraditions from Russia, the interveners submitted that the Russian courts rarely used their power to assess the risks of arbitrary *refoulement*, frequently deferred to the decisions of the Prosecutor General and disregarded the interpretative guidance of the Supreme Court.

C. The Court's assessment

1. General principles established in the Court's case-law

(a) Prohibition on exposing aliens facing removal to a risk of ill-treatment

93. The Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012; *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94; and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). However, the removal of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would face a real risk of being subjected to treatment contrary to Article 3 in the destination country; in these circumstances, Article 3 implies an obligation not to remove the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-25, ECHR 2008).

94. In the case of an extradition, a Contracting State finds itself under an obligation to cooperate in international criminal matters. However, that

obligation is subject to the same State's obligation to respect the absolute nature of the prohibition under Article 3 of the Convention. Therefore, any claim of a real risk of treatment contrary to Article 3 in the event of extradition to a certain country must be subjected to the same level of scrutiny regardless of the legal basis for the removal.

(b) Scope of the assessment: general situation and individual circumstances

95. The risk assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances (see, for example, *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, §§ 107-08, Series A no. 215). It must be considered whether, having regard to all the circumstances of the case, substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention. If the existence of such a risk is established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two (see *F.G. v. Sweden* [GC], no. 43611/11, § 116, 23 March 2016).

96. The starting-point for the assessment should be the examination of the general situation in the destination country. In this connection, and where it is relevant to do so, regard must be had to whether there is a general situation of violence existing in the country of destination (see *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 216, 28 June 2011). However, a general situation of violence will not normally in itself entail a violation of Article 3 in the event of an expulsion to the country in question, unless the level of intensity of the violence is sufficient to conclude that any removal to that country would necessarily breach Article 3 of the Convention. The Court would adopt such an approach only in the most extreme cases, where there is a real risk of ill-treatment simply by virtue of the individual concerned being exposed to such violence on returning to the country in question (see *Sufi and Elmi*, cited above, § 218, and *NA. v. the United Kingdom*, no. 25904/07, § 115, 17 July 2008).

97. In cases where an applicant alleges that he or she is a member of a group systematically exposed to ill-treatment, the Court considers that the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the available sources, that there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned (see *F.G. v. Sweden*, cited above, § 120).

98. The assessment of such claims is different from the assessment relating to the general situation of violence in a particular country, on the one hand, and to individual circumstances, on the other.

99. The first step of this assessment should be the examination of whether the existence of a group systematically exposed to ill-treatment, falling under the "general situation" part of the risk assessment, has been established. Applicants belonging to an allegedly targeted vulnerable group should not describe the general situation, but the existence of a practice or of a heightened risk of ill-treatment for the group of which they claim to be members. As a next step, they should establish their individual membership of the group concerned, without having to demonstrate any further individual circumstances or distinguishing features (see *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 103-05, 23 August 2016).

100. In cases where despite a possible well-founded fear of persecution in relation to certain risk-enhancing circumstances, it cannot be established that a group is systematically exposed to ill-treatment, the applicants are under an obligation to demonstrate the existence of further special distinguishing features which would place them at a real risk of ill-treatment. Failure to demonstrate such individual circumstances would lead the Court to find no violation of Article 3 of the Convention (see, for example, *A.S.N. and Others v. the Netherlands*, nos. 68377/17 and 530/18, 25 February 2020, in respect of Sikhs in Afghanistan; *A.S. v. France*, no. 46240/15, 19 April 2018, in respect of persons linked to terrorism in Algeria; and *A. v. Switzerland*, no. 60342/16, 19 December 2017, in respect of Christians in Iran).

101. In cases where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3, the Court has then examined whether the assurances obtained in the particular case were sufficient to remove any real risk of ill-treatment (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 192, ECHR 2012). However, 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 (ibid., § 187).

(c) Nature of the Court's assessment

102. The Court's concern in the present case is to avoid the applicants being exposed to ill-treatment prohibited by Article 3 in the event of their extradition to Kyrgyzstan. By virtue of Article 1 of the Convention, the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights.

This subsidiary character is articulated in Article 13 and Article 35 § 1 of the Convention (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 286-87, ECHR 2011).

103. The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials, as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see, among other authorities, *NA. v. the United Kingdom*, cited above, § 119).

104. Moreover, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, ECHR 2011; *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, § 113, 3 October 2013; and *Savriddin Dzhurayev*, cited above, § 155). This should not lead, however, to an abdication of the Court's responsibility and a renunciation of all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by the Convention would be devoid of any substance. In accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention (see *Nizomkhon Dzhurayev*, cited above, § 113).

105. As a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses, since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned. Their assessment, however, is also subject to the Court's scrutiny (see, for example, *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010).

106. If the applicant has not already been deported, the material point in time for the assessment must be that of the Court's consideration of the case (see *Chahal v. the United Kingdom*, 15 November 1996, § 86, *Reports* 1996-V). A full and *ex nunc* evaluation is required where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken (see, for example, *Maslov v. Austria* [GC], no. 1638/03, §§ 87-95, ECHR 2008, and *Sufi and Elmi*, cited above, § 215). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known by the Contracting State at the time of the expulsion (see *Saadi*, cited above, § 133). This proviso demonstrates that the primary purpose of the *ex nunc* principle is to serve as a safeguard in cases where a significant amount of time has passed between the adoption of the domestic decision and the

consideration of the applicant's Article 3 complaint by the Court, and therefore where the situation in the receiving State might have developed, that is to say, deteriorated or improved.

107. The Court would emphasise that any finding in such cases regarding the general situation in a given country and its dynamic as well as the finding as to the existence of a particular vulnerable group, is in its very essence a factual *ex nunc* assessment made by the Court on the basis of the material at hand.

108. In some Chamber judgments the Court had to examine whether or not the general situation in the destination country regarding the risk of ill-treatment has improved since it delivered previous judgments in which it found the risk established (see, for example, *A.M. v. France*, no. 12148/18, §§ 120-26, 29 April 2019; *X v. Sweden*, no. 36417/16, §§ 26-31, 52, 9 January 2018; and *Dzhaksybergenov v. Ukraine*, no. 12343/10, § 37 10 February 2011). In so doing, the Court has not regarded an "improvement" as an extra element or criterion to be met in the assessment of the general situation but has used that notion only to describe developments in the countries concerned (Algeria, Morocco and Kazakhstan respectively in the cases cited). The Court has proceeded in the same way in cases where it found the improvement of the general situation in a particular country to be insufficient (see, for example, *Chahal*, cited above, §§ 101-03, and *Salah Sheekh*, cited above, § 139). Accordingly, any examination of whether there has been an improvement or a deterioration in the general situation in a particular country amounts to a factual assessment and it is amenable to revision by the Court in the light of changing circumstances. There is therefore nothing to preclude such a re-examination of the general situation from being carried out by a Chamber in a judgment dealing with an individual case.

(d) Distribution of the burden of proof

109. The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal*, cited above, § 96, and *Saadi*, cited above, § 128). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see, for example, *Saadi*, cited above, § 129, and *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence has been adduced, it is for the Government to dispel any doubts raised by it (see *F.G. v. Sweden*, cited above, § 120).

110. In relation to claims based on an individual real risk, it is incumbent on persons who allege that their removal would amount to a breach of Article 3 to adduce, to the greatest extent practically possible, material and information allowing the authorities of the Contracting State concerned, as well as the Court, to assess the risk a removal may entail (see *Said v. the Netherlands*, no. 2345/02, § 49, ECHR 2005-VI). While a number of

individual factors may not, when considered separately, constitute a real risk, the same factors may give rise to a real risk when taken cumulatively and when considered in a situation of general violence and heightened security (see *NA. v. the United Kingdom*, cited above, § 130).

111. Similarly, when an applicant argues that the general situation in the country is such as to preclude all removals, it is in principle for him or her to adduce the requisite evidence. However, for claims based on a well-known general risk, when information regarding such a risk is freely ascertainable from a wide range of sources, the obligations incumbent on States under Articles 2 and 3 of the Convention mean that the authorities should carry out an assessment of that risk of their own motion (see *F.G. v. Sweden*, cited above, §§ 126-27 with further references).

112. The same principles apply to claims based on belonging to a vulnerable group, which require proof of systematic ill-treatment, as an element of the general situation in a country, and of the applicant's membership of that group (see paragraph 99 above).

(e) The relevant material

113. With regard to the assessment of evidence, it is well established in the Court's case-law that "the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion" (ibid., § 115). The Contracting State has the obligation to take into account not only the evidence submitted by the applicant but also all other facts which are relevant in the case under examination.

114. In assessing the weight to be attached to country material, the Court has found that consideration must be given to the source of such material, in particular its reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi*, cited above, § 143).

115. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question (see *Sufi and Elmi*, cited above, § 231). The Court appreciates the many difficulties faced by governments and NGOs gathering information in dangerous and volatile situations. It accepts that it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and that, in such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on (ibid., § 232).

116. In assessing the risk alleged, the Court may obtain relevant materials *proprio motu*. This principle has been firmly established in the Court's case-law (see *H.L.R. v. France*, 29 April 1997, § 37, *Reports* 1997-III; *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II; and *Hirsi Jamaa*

and Others, cited above, § 116), and it would be too narrow an approach under Article 3 in cases concerning aliens facing expulsion or extradition if the Court, as an international human rights court, were only to take into account materials made available by the domestic authorities of the Contracting State concerned, without comparing them with materials from other reliable and objective sources (see *Salah Sheekh*, cited above, § 136).

2. Application of the above general principles to the instant case

117. The Court must now determine whether, in the light of the general principles established under Article 3 of the Convention, the applicants' extradition from Russia to Kyrgyzstan would give rise to a violation of that Article.

118. The Court notes that between 2012 and 2016 it considered nine cases concerning extraditions of ethnic Uzbeks from Russia to Kyrgyzstan (see *Makhmudzhan Ergashev v. Russia*, no. 49747/11, 16 October 2012; *Gayratbek Saliyev v. Russia*, no. 39093/13, 17 April 2014; *Kadirzhanov and Mamashev v. Russia*, no. 42351/13, 17 July 2014; *Mamadaliyev v. Russia*, no. 5614/13, 24 July 2014; *Khamrakulov v. Russia*, no. 68894/13, 16 April 2015; *Nabid Abdullayev v. Russia*, no. 8474/14, 15 October 2015; *Turgunov v. Russia*, no. 15590/14, 22 October 2015; *Tadzhibayev v. Russia*, no. 17724/14, 1 December 2015; and *R. v. Russia*, no. 11916/15, 26 January 2016). In the above-mentioned judgments the Court, while not considering the general human rights situation, though highly problematic, to be such as to prevent any extradition, established that specific reports described a targeted and systematic practice of ill-treatment against ethnic Uzbeks at the relevant time and, therefore, found that they continued to run a real risk of ill-treatment. The Court will now ascertain whether the currently available information and material still supports a similar finding in respect of the two applicants in the present case, such that their membership of that group suffices to demonstrate the real risk alleged.

(a) The circumstances of the applicants' cases

119. The Court notes that almost six years have passed since the adoption of the final domestic judgments in the applicants' cases. Therefore, in accordance with the *ex nunc* principle, the Grand Chamber must assess the existence of a real risk at the time of its consideration of the case.

(b) General situation in Kyrgyzstan

120. The Court reiterates at the outset that despite expressing concern about repeated incidents of ill-treatment in Kyrgyzstan, it has never found a sufficient basis to conclude that the general situation was such as to preclude all removals to that country (see, for example, *Makhmudzhan Ergashev*; *Gayratbek Saliyev*; and *Tadzhibayev*, all cited above).

121. The available reports of the UN human rights bodies and of international, regional and national NGOs describing the present-day situation in Kyrgyzstan continue to indicate that incidents of torture and ill-treatment, a lack of effective investigations, and recurrent impunity are still major concerns for Kyrgyzstan (see, for example, paragraphs 56 and 59-63 above).

122. In this connection, the Court observes that the Kyrgyz authorities (see paragraph 57 above), in their third periodic report submitted to the Human Rights Committee on 25 February 2020, while indicating that torture was prohibited at constitutional and legislative level and supplying statistical data showing a slight decrease in reported incidents of torture, acknowledged that between 2014 and 2018 criminal proceedings had been instituted upon only 3% of complaints addressed to the national preventive mechanism, and that between 2012 and 2018 the courts had found only eighteen officials guilty of torture in criminal cases. The European Union, in its 2019 Annual Report on Human Rights and Democracy, noted, on the one hand, the Kyrgyz government's commitment to its human rights agenda, the implementation of a reform of the judiciary and the adoption of five new codes with a view to reducing arbitrary decisions, and, on the other hand, continued impunity for the use of torture, widespread corruption, the lack of independence and professionalism of the judicial system and the general weakness of the rule of law.

123. The Court also takes note of the fact that Amnesty International, in its 2019 report (see paragraph 59 above), highlighted the fact that the newly adopted Criminal Code and Code of Criminal Procedure reinforced guarantees against torture and other ill-treatment by expressly outlawing torture and excluding as inadmissible any evidence obtained through it, by ensuring that detainees had the right to a lawyer from the actual moment of their arrest and by requiring that medical evidence be collected once a complaint about torture had been made. At the same time, it reported that NGOs continued to receive reports of torture and other ill-treatment and ethnic profiling by the police. The 2020 report by Human Rights Watch (see paragraph 60 above) also emphasised, with reference to government statistics, that impunity for torture persisted in Kyrgyzstan, but that the amendments to the Criminal Code helped to strengthen the legal protection against torture and increase punishments for perpetrators. Freedom House, in its 2020 report, indicated that there were credible reports of torture during arrest and interrogation, in addition to physical abuse in prisons, and that most such reports did not lead to investigations and convictions (see paragraph 61 above).

124. The Coalition Against Torture in Kyrgyzstan mentioned in its submissions of July 2019 to the UPR Working Group that 30% of the persons detained in remand facilities alleged that they had been subjected to unjustified physical force or torture by law-enforcement bodies and that in

the absolute majority of cases (94%), torture was used by operative officers of the internal affairs bodies in order to extract confessions. While the number of torture allegations registered by both the authorities and NGOs had decreased by about 10% in the period from 2016 to 2018, it remained unclear whether this was the result of the effective steps taken in the fight against torture or an indication of the lack of trust in existing complaint mechanisms of legal protection and fear of subsequent reprisals (see paragraph 62 above).

125. The international reports on the functioning of the national preventive mechanism are mixed. For example, while the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, following its 2018 visit, commended the mechanism for its will and its dedication to the goal of preventing torture, it noted that the Kyrgyz Parliament lacked interest in considering the mechanism's reports and that the recommendations were generally taken lightly by high-ranking governmental authorities, but nonetheless bore some weight at the operational level (see paragraph 40 of the Chamber judgment). In July 2019 the Coalition Against Torture in Kyrgyzstan mentioned in its submission to the UPR Working Group that the Kyrgyz Parliament was sabotaging the activities of the national preventive mechanism and that the latter had no capability to operate properly because of insufficient funding (see paragraph 63 above).

126. Irrespective of the above-mentioned legal and institutional changes, the Court notes that international sources continue to voice concerns about insufficient action by the Kyrgyz authorities to prevent torture and other ill-treatment in practice, and about the prevalence of impunity. However, the available international material does not support a finding that the general situation in the country has either deteriorated as compared to the previous assessments, which did not lead the Court to reach findings precluding all removals to Kyrgyzstan (see paragraph 118 above), or has reached a level calling for a total ban on extraditions to that country (compare *Sufi and Elmi*, cited above, § 216, and *Dzhaksybergenov*, cited above, § 37).

(c) The situation of ethnic Uzbeks in Kyrgyzstan

127. The applicants consistently argued in their submissions before the domestic authorities and the Court that their Uzbek ethnicity placed them in a vulnerable group facing a risk of ill-treatment in the event of their extradition to Kyrgyzstan. Such claims combine elements relating to the general situation in the country concerned and to individual circumstances. Accordingly, they require reliable and objective proof, in terms of the general situation, that the group in question is systematically exposed to ill-treatment and, in terms of the individual circumstances, that the applicants belong to that group (see paragraphs 99, 111 and 112 above).

128. The applicants' ethnicity is not a point of disagreement between the parties to the present case. It is not disputed that the applicants are Kyrgyz

nationals of ethnic Uzbek origin. Accordingly, the Court will now examine whether ethnic Uzbeks are a group which is systematically exposed to ill-treatment in Kyrgyzstan.

129. As has been indicated above, the Court has concluded in a number of judgments concerning the extradition to Kyrgyzstan of ethnic Uzbeks that they faced a real risk of ill-treatment as a consequence of their ethnic origin (see, for example, *Makhmudzhan Ergashev,* and *R. v. Russia*, both cited above). Whether ethnic Uzbeks continue to run a heightened risk of ill-treatment as compared to other persons in Kyrgyzstan is the major point of disagreement between the parties.

130. Accordingly, the Court will focus its scrutiny on the specific allegation that ethnic Uzbeks run a heightened risk of ill-treatment. In doing so, it will take into account in its assessment any indications of an improvement or worsening in the human rights situation in general or in respect of a particular group or area that might be relevant to the applicants' circumstances (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 337, ECHR 2005-III).

131. In this connection, it should be noted that the Court's previous findings that ethnic Uzbeks in Kyrgyzstan constituted a vulnerable group for the purposes of Article 3 of the Convention were based on specific reports describing a targeted and systematic practice of ill-treatment against that group at the relevant time (see the references in paragraph 118 above, and most recently *R. v. Russia*, cited above, § 62).

132. As regards the current situation, the Court notes the absence of specific reporting on ethnicity-based torture of ethnic Uzbeks, as opposed to other ethnicity-based risks, such as insecurity, discrimination with respect to economic and security matters, ethnic profiling and political marginalisation (see paragraphs 55 and 59-60 above). While in the aftermath of the ethnic clashes of June 2010 there was specific evidence indicating that ethnic Uzbeks were at a heightened risk of ill-treatment, the above-mentioned recent reports (see paragraphs 55-64 above) no longer contain such indications. Consequently, the Court has no basis for reaching a conclusion that ethnic Uzbeks constitute a group which is still systematically exposed to ill-treatment. It will therefore now turn to the applicants' individual circumstances.

(d) The applicants' individual circumstances

133. The first applicant was charged in Kyrgyzstan with aggravated misappropriation, whereas the second applicant was charged with several counts of aggravated violent crimes (see paragraphs 15 and 33-34 above). As regards the nature of those charges, the applicants highlighted in their submissions the alleged ethnic component of the charges against both of them. They contested the Chamber's characterisation of the charges as being of a "common criminal nature" and "not prima facie related to the applicants'

Uzbek ethnic origin or political persecution on that ground" (see paragraph 93 of the Chamber judgment).

134. As regards the misappropriation charges brought against the first applicant, the Grand Chamber observes that no solid evidence has been presented in support of the alleged ethnic bias underlying them. The first applicant, for his part, argued that the criminal proceedings had not been initiated against him until 2010 and were in fact a strategy used against ethnic Uzbeks in order to force them to pay bribes and to extort their property. However, those assertions are not supported by any specific and concrete facts, apart from the reference to the time of the opening of the criminal investigation and the inference the Court is being invited to draw therefrom. Although the first applicant contended that the charges against him were neither detailed nor supported by evidence and that this proved that his prosecution was ethnically motivated, the Court observes that the charges against him were sufficiently detailed, mentioning both the victims and the sums allegedly misappropriated by him (see paragraph 15 above). Given that none of his own assertions are supported by any evidence and do not reach beyond the level of speculation, no existence of a real individual risk of ill-treatment can be reliably demonstrated in his case.

135. In respect of the second applicant, the Court notes that the charges against him concern aggravated violent crimes motivated by ethnic hatred in the course of the June 2010 events. However, the mere fact that the applicant has been prosecuted for allegedly ethnically profiling his victims and exerting violence against persons of Kyrgyz ethnicity in the context of inter-ethnic clashes does not automatically mean that he is himself a victim of ethnic persecution or bias. His assertion that the criminal case against him was fabricated or that the accusation of ethnic hatred towards the Kyrgyz part of the population exposed him to prejudice capable of turning into ill-treatment requires separate and proper substantiation. Given that the second applicant has failed to substantiate his allegations beyond ascertaining that he had been charged with hate crimes against ethnic Kyrgyz or to reasonably account for his repeated travel to and from Kyrgyzstan after June 2010 and his obtaining a new passport there several months after arriving in Russia (see paragraph 43 above), no existence of a real individual risk of ill-treatment can be reliably demonstrated in his case.

136. The Court reiterates that as far as individual circumstances are concerned, the burden of proof lies on the applicant to adduce, to the greatest extent practically possible, material and information allowing the authorities of the Contracting State concerned, as well as the Court, to assess the risk his or her removal may entail (see paragraph 110 above). The Court observes that the Russian courts had had engaged with their Convention obligations by carefully and appropriately examining the existence of the individual risks capable of preventing the applicants' extradition. Both of the applicants in the present case have failed to demonstrate to the domestic courts, the Chamber

or the Grand Chamber the existence of ulterior political or ethnic motives behind their prosecution in Kyrgyzstan or further special distinguishing features which would expose them to a real risk of ill-treatment.

137. Although an issue may arise under Article 3 in extradition and expulsion cases where substantial grounds have been shown for believing that the person in question would face a real risk of being subjected to treatment contrary to Article 3 in the destination country, in the absence of any demonstration of such substantial grounds this threshold has not been met by the applicants in the present case.

138. The Grand Chamber takes note of the respondent State's undertaking that, following their extradition, the applicants will benefit from the assurances provided by the Kyrgyz authorities, including monitoring visits by the Russian diplomatic services in Kyrgyzstan (see paragraphs 44 and 88 above). However, in the light of the above findings (see paragraph 137 above), the Court does not deem it warranted to rule on these assurances in the applicants' cases (see paragraph 101 above).

(e) Conclusion

139. Accordingly, there would be no violation of Article 3 of the Convention in the event of the applicants' extradition from Russia to Kyrgyzstan.

II. RULE 39 OF THE RULES OF COURT

140. The Court observes that, in accordance with Article 44 § 1 of the Convention, the present judgment is final. Accordingly, the interim measures previously indicated to the Russian Government under Rule 39 of the Rules of Court on 16 June and 12 October 2015 come to an end.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that there would be no violation of Article 3 of the Convention in the event of the first applicant's extradition to Kyrgyzstan;

2. *Holds* that there would be no violation of Article 3 of the Convention in the event of the second applicant's extradition to Kyrgyzstan.

Done in English and in French, and notified in writing on 29 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert Deputy to the Registrar	Robert Spano President

R.S.
J.C.