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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
PC-OC

Case Law by the European Court of Human Rights of Relevance for the Application of the European Conventions on International Judicial Co-Operation in Criminal Matters

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IMPORTANT NOTES:

- *The following index is neither binding nor exhaustive and is to be used only for reference and as a supplementary tool for practitioners.*
- *In the index of keywords, the keywords and the cases related to each keyword are arranged alphabetically.*
- *Texts of decisions of the Court can be found in the HUDOC database (see below).*
- *Some English translations of the Court's judgments, originally delivered in French and available in the HUDOC database, are summaries of the original judgments and not the judgment in full.*

A. Index of keywords with relevant case law:

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[1]) Keyword “expulsion” includes also other forms of deportation, such as refusal to renew residence permit.

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[2]) Keyword "ill-treatment" includes torture and other forms of cruel or inhumane treatment covered by Article 3 of the Convention.

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[3]) Keyword “life sentence” includes also other forms of extremely long sentences.

	Van Ingen v. Belgium	9987/03
	Zhukovskiy v. Ukraine	31240/03
mutual assistance (hearing witnesses)	Adamov v. Switzerland	3052/06
	A. M. v. Italy	37019/97
	Fąfrowicz v. Poland	43609/07
	Marcello Viola v. Italy	45106/04
	Damir Sibgatullin v. Russia	1413/05
	Solakov v. FYROM	47023/99
	Stojkovic v. France and Belgium	25303/08
	Zhukovskiy v. Ukraine	31240/03
mutual assistance (service of documents)	Fąfrowicz v. Poland	43609/07
	Damir Sibgatullin v. Russia	1413/05
	Somogyi v. Italy	67972/01
mutual assistance (videoconference)	Marcello Viola v. Italy	45106/04
nationality	Abdulazhon Isakov v. Russia	14049/08
ne bis in idem	Veermäe v. Finland	38704/03
non bis in idem – see *ne bis in idem*		
nullum crimen sine lege – see *nulla poena sine lege*		
nulla poena sine lege	Csoszánszki v. Sweden	22318/02
obligation to investigate – see *obligation to prosecute*		
obligation to prosecute[4]	Rantsev v. Cyprus and Russia	25965/04
parole – see *transfer of sentenced persons (early release)*		
presumption of innocence	Ismoilov and others v. Russia	2947/06
refugee – see *asylum*		
relation between extradition and deportation	Bozano v. Switzerland	9009/80
	Öcalan v. Turkey	46221/99
	Ramirez Sanchez v. France	28780/95
release on parole – see *transfer of sentenced persons (early release)*		
res iudicata – see *ne bis in idem*		

[4]) Keyword “obligation to prosecute” means also “obligation to investigate”.

rule of speciality	Woolley v. United Kingdom	28019/10
separation of family – see *family life (separation of family)*		
service of documents – see *mutual assistance (service of documents)*		
speciality – see *rule of speciality*		
torture – see *ill-treatment*		
right of access to court	Smith v. Germany	27801/05
transfer of enforcement of sentence[5]	Garkavyy v. Ukraine	25978/07
	Grori v. Albania	25336/04
transfer of proceedings	Garkavyy v. Ukraine	25978/07
transfer of sentenced persons	Drozd and Janousek v. France and Spain	12747/87
	Selmouni v. France	25803/94
	Smith v. Germany	27801/05
transfer of sentenced persons (Additional Protocol, Article 2)	Garkavyy v. Ukraine	25978/07
transfer of sentenced persons (Additional Protocol, Article 3)	Csoszánszki v. Sweden	22318/02
	Müller v. Czech Republic	48058/09
	Veermäe v. Finland	38704/03
transfer of sentenced persons (conversion of sentence)	Csoszánszki v. Sweden	22318/02
	Veermäe v. Finland	38704/03
transfer of sentenced persons (early release)	Csoszánszki v. Sweden	22318/02
	Veermäe v. Finland	38704/03
videoconference – see *mutual assistance (videoconference)*		
witness immunity – see *mutual assistance (hearing witnesses)*		

[5]) Keyword "transfer of enforcement of sentence" covers transfers of enforcement of sentences both under Article 2 of the Additional Protocol to the Convention on Transfer of Sentenced Persons and under the European Convention on the International Validity of Criminal Judgments.

B. List of case law relevant for the application of the European Convention on Extradition (CETS 024) and its Additional Protocols (CETS 086, 098 and 209)

Case Data	*Summary*
Lynas v. Switzerland No.: 7317/75 Type: Decision Date: 6 October 1976 Articles: N: 2, 3, 5§1(f), 5§3, 5§4, 6§1, 18 Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – extradition (documents in support of) – fair trial – ill-treatment – interim measure Links: English, French Translations: not available	*Circumstances:* Extradition from Switzerland to the United States of America for the purposes of prosecution. Interim measure not complied with. *Relevant complaints:* 1. If extradited, the applicant would be killed by CIA agents. 2. Length of custody pending extradition for three years and eight months excessive. 3. Lack of fair trial (equality of arms) in extradition proceedings. 4. Lawfulness of custody could not be examined by a court until the extradition case was brought to a court. *Commission's conclusions:* 1. Uncorroborated declarations don't constitute satisfactory prima facie evidence to prove real risk of ill-treatment. 2. Article 5§3 of the Convention does not apply to custody pending extradition. If extradition proceedings are not conducted with the requisite diligence, custody pending extradition would cease to be justifiable under Article 5§1(f) of the Convention. A person who complains of the length of his/her custody should have drawn up – and at least reasonably renewed – a request for release. 3. The authorities of the requested State are in no way obliged to authorise the production before them in extradition proceedings of evidence of facts relating to the substance of the charge or the criminal prosecution. 4. The person who complains of not having had, at a particular time, a judicial remedy against his/her custody cannot claim to be a victim of a violation of the Convention if he/she did not pursue this judicial remedy when it was available to him/her.
K. v. Belgium No.: 10819/84 Type: Decision Date: 5 July 1984 Articles: N: 5§2 Keywords: – custody (lawfulness) – custody (right to be	*Circumstances:* Extradition from Belgium to the United States of America for the purposes of prosecution. *Relevant complaint:* The applicant has never been properly informed of the reasons for his arrest. *Court's conclusions:* While it is true that insufficiency of information of the charges held against an arrested person may be relevant for the right to a fair trial under Article 6 of the Convention for persons arrested in accordance with Article 5§1(c) of the Convention, the same does not apply to the arrest with a view to extradition as these proceedings are not concerned with the determination of a criminal charge. It appears from the warrant of arrest that the applicant was suspected of fraud, and that his arrest was being ordered for the purposes of extradition to the United States. The above elements constituted sufficient information.

informed of the reasons for arrest) – extradition (custody) Links: English, French Translations: not available	
Bozano v. Switzerland No.: 9009/80 Type: Decision (Partial) Date: 12 July 1984 Articles: N: 5§1(f), 18 Keywords: – custody (lawfulness) – expulsion – in absentia – relation between extradition and deportation Links: English, French Translations: not available	*Circumstances:* Refusal of extradition from France to Italy for the purposes of enforcement of a sentence imposed in absentia. Instead, the applicant was expelled from France to Switzerland where he was arrested for the purposes of his extradition from Switzerland to Italy. *Relevant complaint:* Unlawfulness of arrest in Switzerland after the applicant's expulsion from France as the co-operation between French and Swiss authorities to arrest him was designed to circumvent the French authorities' refusal of his extradition to Italy. *Commission's conclusion:* A person's arrest for the purposes of extradition proceedings following expulsion from a third State that refused to extradite the to the requesting State does not violate the Convention if it was done in accordance with domestic law and not arbitrarily.
Sanchez-Reisse v. Switzerland No.: 9862/82 Type: Judgment Date: 21 October 1986 Articles: Y: 5§4 Keywords: – custody (judicial review) – extradition (custody) Links: English, French Translations: Bulgarian	*Circumstances:* Extradition from Switzerland to Argentina for the purposes of prosecution. Applicant's repeated requests for provisional release denied by Swiss authorities. *Relevant complaints:* The Swiss system for appealing against custody pending extradition did not afford adequate safeguards under Article 5§4 of the Convention, namely 1. it provided no direct access to a court, 2. it was not possible to conduct one's own defence, 3. it was not possible to reply to the State's opinion and to appear in person before a court, 4. the length of the proceedings was excessive. *Court's conclusions:* 1. As extradition, by its very nature, involves a State's international relations, it is understandable that the executive should have an opportunity to express its views on a measure likely to have an influence in such a sensitive area. 2. Requirement of assistance of a lawyer in extradition proceedings affords an important guarantee to the person whose extradition is sought and who is, by definition, a foreigner in the country in question and,

	therefore, often unfamiliar with its legal system. 3. Article 5§4 of the Convention requires the State to provide, in some way or another, the person whose extradition is sought with the benefit of an adversarial procedure. Giving the person the possibility of submitting written comments on the State's opinion would have constituted an appropriate means. 4. The extradition issue forms the backcloth to the requests for release and necessarily influences the consideration of the matter. Whenever a foreign State's request for extradition does not, at the outset, appear unacceptable to the authorities of the requested State, custody is the rule and release the exception. The fact nevertheless remains that the applicant is entitled to a speedy decision – whether affirmative or negative – on the lawfulness of his custody.
Soering v. United Kingdom No.: 14038/88 Type: Judgment Date: 7 July 1989 Articles: Y: 3; N: 6§3(c), 6§1, 6§3(d), 13 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment Links: English, French Translations: Bosnian, Russian	*Circumstances:* Extradition from the United Kingdom to the United States of America for the purposes of prosecution that could result in imposition of death penalty. *Relevant complaints:* 1. Exposure to the so-called "death row phenomenon" in case of extradition and subsequent imposition of death penalty, even if such penalty is not enforced, would amount to violation of Article 3 of the Convention. 2. Assurance provided by the requesting State was so worthless in its content that no reasonable requested State could regard it as satisfactory. *Court's conclusions:* 1. No derogation from the prohibition of ill-treatment under Article 3 of the Convention is permissible (absolute prohibition of torture and of inhuman or degrading treatment or punishment). The decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to ill-treatment in the requesting State. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. 2. Objectively it cannot be said that an assurance to inform the judge at the sentencing stage of the wishes of the requested State for the death penalty to not be imposed eliminates the risk of the death penalty being imposed.
Cruz Varas and others v. Sweden No.: 15576/89 Type: Judgment	*Circumstances:* Expulsion from Sweden to Chile. Interim measure not complied with. *Relevant complaints:* 1. The expulsion constituted ill-treatment in breach of Article 3 of the Convention because of the risk that the applicant would be tortured by the Chilean authorities and because of the trauma involved in being sent

Date: 20 March 1991 Articles: N: 3, 8, 25§1 Keywords: – asylum – expulsion – family life (separation of family) – ill-treatment – interim measure Links: English, French Translations: Georgian, Russian	back to a country where he had previously been tortured. 2. All three applicants alleged that the expulsion of the first applicant led to a separation of the family and amounted to a violation of their right to respect for family life contrary to Article 8 of the Convention. 3. The failure by the Swedish Government to comply with the Commission's request under Rule 36 of its Rules of Procedure not to expel the applicants amounted to a breach of Sweden's obligation under Article 25§1 of the Convention not to hinder the effective exercise of the right of petition to the Commission. *Court's conclusions:* 1. Even if allowances are made for the apprehension that asylum-seekers may have towards the authorities and the difficulties of substantiating their claims with documentary evidence, the first applicant's complete silence as to his alleged clandestine activities and torture by the Chilean police until more than eighteen months after his first interrogation by the Swedish Police casts considerable doubt on his credibility in this respect. His credibility is further called into question by the continuous changes in his story following each police interrogation and by the fact that no material has been presented to the Court which substantiates his claims of clandestine political activity. In any event, a democratic evolution was in the process of taking place in Chile which had led to improvements in the political situation and, indeed, to the voluntary return of refugees from Sweden and elsewhere. The Court also attaches importance to the fact that the Swedish authorities had particular knowledge and experience in evaluating claims of the present nature by virtue of the large number of Chilean asylum-seekers who had arrived in Sweden since 1973. 2. The evidence adduced does not show that there were obstacles to establishing family life by all the applicants in their home country. 3. Non-compliance with interim measure in this case did not hinder the applicants in the exercise of the right of petition to the Commission to any significant degree and, therefore, did not violate Article 25 of the Convention.
Vilvarajah and others v. United Kingdom Nos.: 13163/87 & 13164/87 & 13165/87 & 13447/87 & 13448/87 Type: Judgment Date: 30 October 1991 Articles: N: 3, 13	*Circumstances:* Expulsion of five Tamils from the United Kingdom to Sri Lanka following failed applications for asylum. *Relevant complaint:* Expulsion exposed the applicants to ill-treatment in Sri Lanka given the deteriorating general situation in Sri Lanka and greater risk of ill-treatment of young Tamil men by the security forces of Sri Lanka. *Court's conclusions:* In determining whether substantial grounds have been shown for believing the existence of a real risk of treatment contrary to Article 3 of the Convention the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained proprio motu. The existence of the risk must

Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion; the Court is not precluded, however, from having regard to information which comes to light subsequent to the expulsion. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention.
Kolompar v. Belgium No.: 11613/85 Type: Judgment Date: 24 September 1992 Articles: N: 5§1, 5§4 Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) Links: English, French Translations: not available	*Circumstances:* Extradition from Belgium to Italy for the purposes of enforcement of a sentence imposed in absentia. *Relevant complaints:* 1. The applicant's custody for the purposes of extradition proceedings had served, unlawfully, to ensure that the sentence which he was eventually given by the Belgian courts in Belgian criminal proceedings, on charges unrelated to the extradition, was executed. 2. The extradition proceedings had not been conducted at a reasonable pace. *Court's conclusions:* 1. Because Belgian authorities counted the custody against the sentence imposed in the Belgian criminal proceedings, the Court did not consider that period of custody to be custody for the purposes of extradition proceedings. 2. The Belgian State cannot be held responsible for the delays to which the applicant's conduct gave rise. The latter cannot validly complain of a situation which he largely created.
Quinn v. France No.: 18580/91 Type: Judgment Date: 22 March 1995 Articles: Y: 5§1; N: 5§3 Keywords: – custody (length) – extradition (custody) Links: English, French Translations: Latvian, Ukrainian	*Circumstances:* Extradition from France to Switzerland for the purposes of prosecution. Custody for the purposes of extradition proceedings for one year, eleven months and six days. *Relevant complaints:* 1. Continued custody, following an order by French court in domestic criminal proceedings for the applicant to be immediately released, arbitrary in order to leave the Paris public prosecutor's office time to instigate the setting in motion of the extradition proceedings. Custody pending extradition had simply amounted to the extension, on a different legal basis, of the period of remand detention which had just come to an end in the criminal proceedings conducted in France. Alleged an abuse of the extradition procedure for purposes relating to the investigation in France. 2. Length of custody pending extradition for almost 2 years unjustified and disclosed an abuse of the extradition procedure. The true aim of the French authorities had been to keep the applicant at their disposal for as long as was necessary to pursue the investigation in France. *Court's conclusions:*

	1. Some delay in executing a decision ordering the release of a detainee is understandable. However, in the instant case the applicant remained in detention for 11 hours after the Indictment Division's decision directing that he be released "forthwith", without that decision being notified to him or any move being made to commence its execution. 2. No evidence that the detention pending extradition pursued an aim other than that for which it was ordered and that it was pre-trial detention in disguise. The fact that extradition proceedings and domestic criminal proceedings were conducted concurrently cannot in themselves warrant the conclusion that there was abuse, for purposes relating to national law, of the extradition procedure. The applicant's detention with a view to extradition was, however, unusually long. Deprivation of liberty is justified only for as long as extradition proceedings are being conducted. It follows that if such proceedings are not being conducted with due diligence, the custody will cease to be justified under Article 5§1(f) of the Convention.
Nasri v. France No.: 19465/92 Type: Judgment Date: 13 July 1995 Articles: Y: 8 Keywords: – expulsion – family life (separation of family) Links: English, French Translations: Romanian, Russian	*Circumstances:* Expulsion from France to Algeria of a deaf and dumb Algerian national, who lived in France since age 5. Between 1981 and 1993, the applicant committed a number of criminal offences in France and his expulsion was ordered on the ground that his presence in France represented a threat to public order. *Relevant complaint:* Expulsion in this case could not be regarded as necessary in a democratic society in view of the fact that the applicant was deaf and dumb, illiterate and with no command of deaf and dumb sign language and, therefore, would have enormous difficulties in communicating if removed from his family circle, the only persons capable of understanding the signs he used to express himself. His parents and his brothers and sisters had not left France since 1965; six of his brothers and sisters had acquired French nationality. He himself had never severed links with his family; indeed, apart from certain periods spent with his sister and his brother-in-law, he had always lived at his parents' home. In addition, the applicant had no knowledge of Arabic. The little schooling he had been given had been received solely in France and his contacts with the North African community were confined to the second generation, the very large majority of whom did not speak Arabic. *Court's conclusions:* In view of the accumulation of special circumstances, notably the applicant's situation as a deaf and dumb person, capable of achieving a minimum psychological and social equilibrium only within his family, the majority of whose members are French nationals with no close ties with Algeria, the decision to expel the applicant, if executed, would not be proportionate to the legitimate aim pursued.
Ramirez Sanchez v. France No.: 28780/95 Type: Decision Date: 24 June 1996	*Circumstances:* Expulsion (disguised extradition) of a well-known terrorist from Sudan to France where he was subject to criminal prosecution. *Relevant complaint:* Since the applicant was seized abroad, the French judicial authorities should have issued an international arrest warrant. Extradition procedure laid down by French law had not been followed,

Articles: N: 3, 5§1 Keywords: – custody (lawfulness) – expulsion – relation between extradition and deportation Links: English, French Translations: not available	although he had allegedly been expelled from Sudan at the French Interior Ministry. He claimed to have been wrongfully extradited since the unlawfulness of the request for him to be handed over gad rendered his arrest void under French law. In the absence of an international arrest warrant, there was, at the time and place of his being handed over to the French authorities, no lawful authority for his arrest and detention by French officers in Khartoum. *Court's conclusions:* From the time of being handed over to French officers, the applicant was effectively under the authority, and therefore the jurisdiction, of France, even if this authority was, in the circumstances, being exercised abroad. It does not appear that any cooperation which occurred in this case between the Sudanese and French authorities involved any factor which could raise problems from the point of view of Article 5 of the Convention, particularly in the field of the fight against terrorism, which frequently necessitates cooperation between States. The fact that the arrest warrant was not served on the applicant until he left the aeroplane after having landed in France does not mean that the alleged prior deprivation of his liberty had no legal basis in French law. Even assuming that the circumstances in which the applicant arrived in France could be described as a disguised extradition, this could not, as such, constitute a breach of the Convention.
Chahal v. United Kingdom No.: 22414/93 Type: Judgment Date: 15 November 1996 Articles: Y: 3, 5§4, 13; N: 5§1 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – custody (length) – expulsion – ill-treatment Links: English, French Translations: Bosnian, Russian	*Circumstances:* Expulsion of a Sikh activist from the United Kingdom to India following failed application for asylum. The Government of India provided assurance that the applicant, if expelled to India, "would enjoy the same legal protection as any other Indian citizen, and that he would have no reason to expect to suffer mistreatment of any kind at the hands of the Indian authorities." *Relevant complaint:* If expelled to India, the applicant would be subjected to ill-treatment, as he was a well-known supporter of Sikh separatism. *Court's conclusions:* Assurance provided by the Government of India insufficient, as despite the efforts of that Government to bring about reform, the violation of human rights by certain members of the security forces in Punjab and elsewhere in India is a recalcitrant and enduring problem. The applicant's high profile would be more likely to increase the risk to him of harm.
D. v. United Kingdom No.: 30240/96 Type: Judgment	*Circumstances:* Expulsion from the United Kingdom to St. Kitts where he could not receive adequate medical treatment for AIDS and AIDS-related infections. *Relevant complaint:* Expulsion to St. Kitts would condemn the applicant to spend his remaining days in pain

Date: 2 May 1997 Articles: Y: 3; N: 8, 13 Keywords: – expulsion – ill-treatment Links: English, French Translations: Russian	and suffering in conditions of isolation, squalor and destitution, as he had no close relatives or friends in St. Kitts, no accommodation, no financial resources and no access to any means of social support. The withdrawal of his current medical treatment would hasten his death on account of the unavailability of similar treatment in St Kitts where hospital facilities were extremely limited and certainly not capable of adequate medical treatment for AIDS-related infections. His death would thus not only be further accelerated, it would also come about in conditions which would be inhuman and degrading. *Court's conclusions:* In view of these exceptional circumstances and bearing in mind the critical stage now reached in the applicant's fatal illness, his expulsion to St. Kitts would amount to ill-treatment in violation of Article 3 of the Convention. Although it cannot be said that the conditions which would confront the applicant in the receiving country are themselves a breach of the standards of Article 3 of the Convention, his removal would expose him to a real risk of dying under most distressing circumstances. Against this background the Court emphasizes that aliens who have served their prison sentences and are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State during their stay in prison.
T. I. v. United Kingdom No.: 43844/98 Type: Decision Date: 7 March 2000 Articles: N: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	*Circumstances:* Expulsion from the United Kingdom to Germany. *Relevant complaint:* The applicant would be summarily expelled from Germany to Sri Lanka (his asylum application in Germany had been already denied) where he would be ill-treated by both the separatist and pro-Government forces. *Court's conclusions:* Indirect removal in to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention. Nor can the United Kingdom rely automatically in that context on the arrangements made in the Dublin Convention concerning the attribution of responsibility between European countries for deciding asylum claims. As the applicant could seek not only asylum but also other forms of protection in Germany from being expelled to Sri Lanka, his expulsion to Germany itself does not create a real risk of ill-treatment.
Jabari v. Turkey No.: 40035/98 Type: Judgment Date: 11 July 2000 Articles: Y: 3, 13 Keywords: – asylum	*Circumstances:* Expulsion from Turkey to Iran of person granted refugee status by the UNHCR. Application for asylum denied because the applicant had failed to file it within 5 days since her arrival to Turkey. *Relevant complaint:* In Iran, the applicant would be prosecuted and sentenced to a form of inhuman punishment prescribed by Iranian law for adultery (stoning to death, flogging and whipping). *Court's conclusions:* The applicant's failure to comply with the five-day registration requirement under the Asylum Regulation 1994 denied her any scrutiny of the factual basis of her fears about being removed to Iran. The automatic and mechanical application of such a short time-limit for submitting an asylum application must

– expulsion – ill-treatment Links: English, French Translations: not available	be considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention.
Nivette v. France No.: 44190/98 Type: Decision Date: 3 July 2001 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English, French Translations: not available	*Circumstances:* Extradition from France to the United States of America for the purposes of prosecution for murder. The Sacramento County District Attorney provided assurance that his office would not seek death penalty for the applicant. According to a further assurance, sentence of life imprisonment without the possibility of parole could also not be imposed. *Relevant complaint:* Extradition to the United States would breach Article 3 of the Convention if he were to be sentenced to life imprisonment without any possibility of early release. Assurances provided by the Sacramento County District Attorney not sufficiently binding on the State of California, the best assurance would be one from the State Governor or the President of the United States. What was in issue in the instant case was not parole, which did not exist in the United States, but only remission; if he was sentenced to thirty-five years' imprisonment and depending on what remission he was granted, he would come out of prison when he was anything between 86 and 91 years old and would accordingly have no chance of making a new start in life. *Court's conclusions:* The United States government's declarations are not necessarily inadequate or ineffective on that account, inasmuch as they complement the undertakings made previously and subsequently by the Californian prosecuting authorities. It is the view of the Californian prosecuting authorities that is the decisive factor in this instance. The assurances obtained by the French government are such as to avert the danger of the applicant's being sentenced to life imprisonment without any possibility of early release. His extradition, therefore, cannot expose him to a serious risk of treatment or punishment prohibited by Article 3 of the Convention.
Boultif v. Switzerland No.: 54273/00 Type: Judgment Date: 2 August 2001 Articles: Y: 8 Keywords: – expulsion – family life (separation of family)	*Circumstances:* Expulsion from Switzerland to Algeria following enforcement of a sentence of imprisonment imposed on the applicant in Switzerland. *Relevant complaint:* The Swiss authorities had not renewed the applicant's residence permit. As a result, he had been separated from his wife, who was a Swiss citizen and could not be expected to follow him to Algeria. The mere fact that his wife spoke French was insufficient to make it possible for her to join him in Algeria. Moreover, in Algeria people lived in constant fear on account of fundamentalism. *Court's conclusions:* In assessing the relevant criteria in such a case, the Court will consider the nature and seriousness of the offence committed by the applicant; the duration of the applicant's stay in the country from which he is going to be expelled; the time which has elapsed since the commission of the offence and the

Links: English, French Translations: not available	applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage; other factors revealing whether the couple lead a real and genuine family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; and whether there are children in the marriage and, if so, their age. Not least, the Court will also consider the seriousness of the difficulties which the spouse would be likely to encounter in the applicant's country of origin, although the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself preclude expulsion. The applicant's wife has never lived in Algeria, she has no other ties with that country, and indeed does not speak Arabic. In these circumstances she cannot, in the Court's opinion, be expected to follow her husband, the applicant, to Algeria. When the Swiss authorities decided to refuse permission for the applicant to stay in Switzerland, he presented only a comparatively limited danger to public order.
Einhorn v. France No.: 71555/01 Type: Decision Date: 16 October 2001 Articles: N: 3, 6 Keywords: – assurances – death penalty – extradition (grounds for refusal) – fair trial – ill-treatment – in absentia – life sentence Links: English, French Translations: not available	*Circumstances:* Extradition from France to the United States of America for the purposes of a sentence of life imprisonment imposed in absentia for an offence for which death penalty could be imposed. Extradition first denied but later granted on the basis of a fresh extradition request following a change in the laws of Pennsylvania and under the condition that the applicant would be granted re-trial and death penalty would not be sought, imposed or carried out. *Relevant complaints:* 1. Extradition would breach Article 3 of the Convention in that there were substantial grounds for believing that the applicant faced a real risk of being sentenced to death and hence of being exposed to the "death-row phenomenon", a source of inhuman or degrading treatment or punishment. 2. The applicant was likely to have to serve a life sentence without any real possibility of remission or parole in breach of Article 3 of the Convention. 3. The law allowing for re-trial of in absentia sentenced persons in Pennsylvania was a specially passed law with retrospective effect, which had been enacted by the Pennsylvania legislature with the sole aim of influencing the judicial outcome of the extradition proceedings instituted against him in France, thereby breaching his right to a fair trial. 4. Even if the applicant could in fact have a new trial in Pennsylvania, such a trial would not satisfy the requirements of Article 6 of the Convention in view of the "pressure of legal and media attention" which the case had generated in the United States and which a jury would be not have been able to avoid. *Court's conclusions:* 1. The applicant was not sentenced to death at his trial *in absentia* in Pennsylvania. The offence of which he stood accused was committed in 1977, before the statute of 13 September 1978 restoring the death penalty

	in Pennsylvania came into force. The principle that the law should not have retrospective effect would therefore preclude his being sentenced to death after a retrial in that State. That is confirmed by the affidavit sworn by the District Attorney of Philadelphia County and by the diplomatic notes from the United States embassy. The Government obtained sufficient guarantees that the death penalty would not be sought, imposed or carried out. 2. It follows from the Pennsylvania Constitution and from the legislative provisions in force in that State that the Governor of Pennsylvania may commute a life sentence to another one of a duration which affords the possibility of parole. Admittedly, it follows from the above provisions that the possibility of parole for prisoners serving life sentences in Pennsylvania is limited. It cannot be inferred from that, however, that if the applicant was sentenced to life imprisonment after a new trial in Pennsylvania, he would not be able to be released on parole, and he did not adduce any evidence to warrant such an inference. 3. The proceedings instituted by the French authorities in the light of the change in the law in Pennsylvania and of the extradition request of 2 July 1998 are quite distinct from the first set of proceedings. Consequently, it cannot be argued that the fact of taking into account the statute of 27 January 1998 influenced the outcome of proceedings which were already under way or that, in ruling for a second time on the applicant's extradition, the Indictment Division disregarded the principle of *res judicata*. While serious questions arise as to the conformity of the statute of 27 January 1998 with the Pennsylvania Constitution, they do not, in the absence of a finding by the competent courts in Pennsylvania, prove that it is unconstitutional. It cannot be inferred from them, without going thoroughly into the question whether the statute is constitutional, that there are "substantial grounds" for believing that the applicant will be unable to obtain a retrial in Pennsylvania or that the denial of justice he fears is "flagrant". It was patently not for the respondent State to determine such an issue before granting extradition, and it cannot be argued that such a duty arose from its obligations under the Convention. 4. The Court does not exclude the possibility that the fact of being tried in such circumstances may raise an issue under Article 6§1 of the Convention. It points out, however, that where extradition proceedings are concerned, an applicant is required to prove the "flagrant" nature of the denial of justice which he fears. In the instant case the applicant did not adduce any evidence to show that, having regard to the relevant American rules of procedure, there are "substantial grounds for believing" that his trial would take place in conditions that contravened Article 6 of the Convention.
Čonka v. Belgium No.: 51564/99 Type: Judgment	*Circumstances:* Expulsion of four Roma from Belgium to Slovakia following failed applications for asylum. *Relevant complaint:* The applicants had no remedy available to complain of the alleged violations of Article 3 of the Convention that satisfied the requirements of Article 13 of the Convention. There was no guarantee of

Date: 5 February 2002 Articles: Y: 5§1, 5§4, 13, 4 (Prot. 4); N: 5§2, 13 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – expulsion – ill-treatment Links: English only Translations: Ukrainian	being heard in the procedure before the Commissioner-General for Refugees and Stateless Persons since, although that was the practice, it did not constitute a right. The applicant had no access to his case file, could not consult the record of notes taken at the hearing or demand that his observations be put on record. As regards the remedies available before the Conseil d'Etat, they were not effective for the purposes of Article 13 of the Convention, as they had no automatic suspensive effect. In expulsion cases, in which enforcement of the contested State measure produced irreversible consequences, the effectiveness of the remedy depended on its having suspensive effect, which was thus a requirement of Article 13 of the Convention. *Court's conclusions:* The "effectiveness" of a "remedy" within the meaning of Article 13 of the Convention does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13 of the Convention, the aggregate of remedies provided for under domestic law may do so. The notion of an effective remedy under Article 13 requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible. It is not possible to exclude the risk that in a system where stays of execution must be applied for and are discretionary they may be refused wrongly, in particular if it was subsequently to transpire that the court ruling on the merits has nonetheless to quash a deportation order for failure to comply with the Convention, for instance, if the applicant would be subjected to ill-treatment in the country of destination or be part of a collective expulsion. In such cases, the remedy exercised by the applicant would not be sufficiently effective for the purposes of Article 13 of the Convention.
Aronica v. Germany No.: 72032/01 Type: Decision Date: 18 April 2002 Articles: N: 2, 3, 6§1, 8 Keywords: – extradition (grounds for refusal) – fair trial – family life (separation of family) – ill-treatment	*Circumstances:* Extradition from Germany to Italy for the purposes of enforcement of a sentence *Relevant complaints:* 1. German authorities refuse to take adequate measures to protect the applicant's life since his detention and the envisaged extradition to Italy placed him at a very serious risk of suicide. 2. Extradition would lead to separation of the applicant from his family with which he has lived in Germany for seven years. *Court's conclusions:* 1. There is no indication that the German authorities have disregarded the applicant's physical and mental condition, or failed to provide necessary medical care. The Court also notes that in the present case the extradition is to a State Party to the Convention. 2. Although the applicant's removal from Germany would involve considerable hardship, the Court considers, taking into account the margin of appreciation left to the Contracting States in such

Links: English only Translations: not available	circumstances that the decision to extradite the applicant was not disproportionate to the legitimate aims pursued.
~~**Kalashnikov v. Russia**~~ ~~No.: 47095/99~~ ~~Type: Judgment~~ ~~Date: 15 October 2002~~ ~~Articles: Y: 3, 5§3, 6§1~~ ~~Keyword:~~ ~~– custody (length)~~ ~~– fair trial~~ ~~– ill-treatment~~ ~~Links: English only~~ ~~Translations: Armenian, Romanian, Russian~~	*Does not really concern international co-operation as such (although it is often quoted vis-à-vis Article 3 of the Convention and prison conditions).*
Mamatkulov and Askarov v. Turkey Nos.: 46827/99 & 46951/99 Type: Judgment Date: 4 February 2005 Articles: Y: 34; N: 3, 6§1 Keywords: – assurances – asylum – extradition (grounds for refusal) – fair trial – ill-treatment – interim measure Links: English, French Translations: Georgian	*Circumstances:* Extradition from Turkey to Uzbekistan. Interim measure not complied with. *Relevant complaints:* 1. The applicants' return to Uzbekistan would result in their being subjected to treatment proscribed by Article 3 of the Convention by reason of the poor conditions and use of torture in Uzbek prisons. In support of their allegations, they referred to reports by "international investigative bodies" in the human rights field denouncing both an administrative practice of torture and other forms of ill-treatment of political dissidents, and the Uzbek regime's repressive policy towards dissidents. 2. The applicants had not had a fair hearing in the criminal court that had ruled on the request for their extradition, in that they had been unable to gain access to all the material in the case file or to put forward their arguments concerning the characterization of the offences they were alleged to have committed. 3. The applicants had no prospect of receiving a fair trial in Uzbekistan and faced a real risk of being sentenced to death and executed. Uzbek judicial authorities were not independent of the executive. The applicants had been held incommunicado since their extradition until the start of their trial and had not been permitted representation by a lawyer of their choosing. They said that the depositions on which the finding of guilt had been based had been extracted under torture. 4. By extraditing the applicants despite the interim measure indicated by the Court under Rule 39 of the Rules of Court, Turkey had failed to comply with its obligations under Article 34 of the Convention. *Court's conclusions:*

	1. Reports of international human rights organizations describe the general situation in Uzbekistan but they do not support the specific allegations made by the applicants in the instant case and require corroboration by other evidence. 2. Decisions regarding the entry, stay and expulsion of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6§1 of the Convention. Consequently, Article 6§1 of the Convention is not applicable in the instant case. 3. Like the risk of treatment proscribed by Article 2 and/or Article 3 of the Convention, the risk of a flagrant denial of justice in the country of destination must primarily be assessed by reference to the facts which the Contracting State knew or should have known when it extradited the persons concerned. 4. The obligation set out in Article 34 *in fine* requires the Contracting States to refrain also from any act or omission which, by destroying or removing the subject matter of an application, would make it pointless or otherwise prevent the Court from considering it under its normal procedure. By virtue of Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant's right of application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 of the Convention.
Bordovskiy v. Russia No.: 49491/99 Type: Judgment Date: 8 February 2005 Articles: N: 5§1, 5§2, 5§4 Keywords: – extradition (custody) – custody (judicial review) – custody (lawfulness) – custody (length) – custody (right to be informed of the reasons for arrest) Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Belarus. *Relevant complaints:* 1. A person should normally be arrested on the basis of a request for extradition, but nothing showed that any such request had been received by the Russian authorities before the applicant's arrest. The Belarusian detention order itself could not serve as the basis for the applicant's preliminary arrest because Belarus and Russia were independent States with their own rules of criminal procedure. 2. The law governing the extradition procedure was not sufficiently precise. 3. The applicant had not been informed about the reasons for his arrest. *Court's conclusions:* 1. The Russian General Prosecutor's Office had indeed received the Belarusian General Prosecutor's Office request for extradition on 4 August 1998, i.e. 26 days after the applicant's arrest on 9 July 1998. However, as early as 22 September 1997, that is some 9 months before the arrest, the Russian authorities had received from Belarus an international search and arrest warrant for the applicant. It follows that, pursuant to Article 61§1 of the applicable extradition treaty, the Russian authorities were under an obligation to find and arrest the applicant, which they did. Furthermore, the request for the applicant's extradition, required

	by Article 56 of the applicable extradition treaty, was received by the Russian General Prosecutor's Office within the 40-day time-limit established by Article 62§1 of that treaty, i.e. in time. 2. The "quality of the law" is not an end in itself and cannot be gauged in the abstract. It only becomes relevant if it is shown that the poor "quality of the law" has tangibly prejudiced the applicant's substantive Convention rights. 3. When a person is arrested on suspicion of having committed a crime, Article 5§2 of the Convention neither requires that the necessary information be given in a particular form, nor that it consists of a complete list of the charges held against the arrested person. When a person is arrested with a view to extradition, the information given may be even less complete.
Shamayev and others v. Georgia and Russia No.: 36378/02 Type: Judgment Date: 14 April 2005 Articles: Y: 3, 5§2, 5§4, 13, 34, 38§1(a); N: 2, 3, 5§1 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – death penalty – extradition (custody) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English, French	*Circumstances:* Extradition of 13 Russian and Georgian nationals of Chechen and Kist origin from Georgia to Russia. Interim measure not complied with in relation to 5 of the applicants. *Relevant complaints:* 1. The applicants considered that the Georgian authorities had exposed the extradited applicants to the risks of imposition of the death penalty, extra-judicial execution and ill-treatment in Russia in breach of the requirements resulting from Articles 2 and 3 of the Convention. Were the other applicants to be handed over to the Russian authorities, they would be exposed to the same fate. They pointed out that the CPT itself had stated in one of its statements that Russia was failing to respect the assurances that it had signed. They alleged that the moratorium on death penalty in Russia had no binding legal basis. Furthermore, they made allegations of systematic ill-treatment of males of Chechen origin by representatives of the Russian authorities. 2. The applicants were not informed either during their transfer to prison or subsequently that they had been arrested with a view to being handed over to the Russian authorities. The applicants had thus been deprived of the possibility of challenging the lawfulness of that custody. 3. The extradited applicants learned of their extradition before being driven to the airport. As the extradition orders had not been served on them, they had been deprived of the possibility of bringing their complaints under Articles 2 and 3 of the Convention before a court. In addition, the extradition orders were not served on the applicants' lawyers before the domestic courts. *Court's conclusions:* 1. Proof of ill-treatment may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un-rebutted presumptions of fact. In assessing the credibility of the assurances provided by Russia, it is important that they were issued by the Procurator-General, who, within the Russian system, supervises the activities of all Russian prosecutors, who, in turn, argue the prosecution

Translations: Ukrainian	case before the courts. The prosecution authorities also fulfil a supervisory role in respect of the rights of prisoners in Russia, and that this role includes the right to visit and supervise places of custody without hindrance. The applicants' representatives, in alleging the existence of a risk to the applicants in Russia, have also failed to submit sufficient information as to the objective likelihood of the personal risk run by their clients as a result of extradition. In the absence of other specific information, the evidence submitted to the Court by the applicants' representatives concerning the general context of the conflict in the Chechen Republic does not establish that the applicants' personal situation was likely to expose them to the risk of treatment contrary to Article 3 of the Convention. A mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Article 3 of the Convention, especially as the Georgian authorities had obtained assurances from Russia against that possibility. Even if, in view of the extreme violence which characterizes the conflict in the Chechen Republic, the Court cannot rule out that extradition may well have made the applicants entertain the fear of a certain risk to their lives, the mere possibility of such a risk cannot in itself entail a violation of Article 2 of the Convention. 2. The applicants' pre-trial custody and custody pending the extradition proceedings had partly overlapped but the fact that proceedings were conducted concurrently cannot in itself warrant the conclusion that there was abuse, for purposes relating to national law, of the extradition procedure. In the context of extradition, the Georgian law gives direct legal force to a foreign detention order, and there is no mandatory requirement for a domestic decision to commit the individual to custody with a view to extradition. If, after three months, the order has not been extended by the requesting State, the individual whose extradition is sought must be released. The Court therefore notes that, during the period in issue, the applicants' detention was always governed by the exceptions set out in Article 5§1(c) and (f) of the Convention and that it was not unlawful in view of the legal safeguards provided by the Georgian system. However, the applicants did not receive sufficient information (about the fact that they are in custody pending extradition) for the purposes of Article 5§2 of the Convention. 3. Only the prison governor and three other employees of the prison administration were aware of the surrender (extradition) which was being prepared. In the Court's opinion, such an enforcement procedure cannot be regarded as transparent and hardly demonstrates that the competent authorities took steps to protect the applicants' right to be informed of the extradition measure against them. In order to challenge an extradition order, the applicants or their lawyers would have had to have sufficient information, served officially and in good time by the competent authorities. Accordingly, the Government do not have grounds for criticising the applicants' lawyers for failing to lodge an appeal against a measure whose existence they learned of only through a leak from inside the State administration. The Court finds it

	unacceptable for a person to learn that he is to be extradited only moments before being taken to the airport, when his reason for fleeing the receiving country has been his fear of treatment contrary to Article 2 or Article 3 of the Convention. Neither the applicants extradited nor their lawyers were informed of the extradition orders issued in respect of the applicants, and the competent authorities unjustifiably hindered the exercise of the right of appeal that might have been available to them, at least theoretically.
Müslim v. Turkey No.: 53566/99 Type: Judgment Date: 26 April 2005 Articles: N: 3 Keywords: – expulsion – ill-treatment Links: French only Translations: not available	*Circumstances:* Risk of expulsion of an Iraqi national of Turkmen origin from Turkey to Iraq, where the applicant was prosecuted for involvement of an attempted murder of a politician, following failed applications for asylum. *Relevant complaint:* The applicant would incur a risk of ill-treatment and his life would be endangered, if expelled to Iraq, where security conditions remain very poor for the Turkmen even after the fall of Saddam Hussein's regime. *Court's conclusions:* The evidence before the Court as to the history of the applicant and the general context in Iraq do not establish that his personal situation would be worse than other members of the Turkmen minority, or of the other inhabitants of northern Iraq, region that seems less affected by violence than other parts of the country.
Öcalan v. Turkey No.: 46221/99 Type: Judgment Date: 12 May 2005 Articles: Y: 3, 5§3, 5§4, 6§1, 6§3(b)(c); N: 2, 5§1, 14, 34 Keywords: – custody (judicial review) – custody (lawfulness) – death penalty – expulsion – extradition (custody) – fair trial – relation between extradition and deportation Links: English, French Translations: not available	*Circumstances:* Expulsion or "atypical extradition" of a Kurd activist from Kenya to Turkey. *Relevant complaint:* The applicant complained that he had been deprived of his liberty unlawfully, without the applicable extradition procedure being followed (instead, he been de facto abducted by the Turkish authorities operating abroad, beyond their jurisdiction). *Court's conclusions:* An arrest made by the authorities of one State on the territory of another State, without the consent of the latter, affects the arrested person's individual rights to security under Article 5§1 of the Convention. The Convention does not prevent cooperation between States, within the framework of extradition treaties or in matters of deportation, for the purpose of bringing fugitive offenders to justice, provided that it does not interfere with any specific rights recognised in the Convention. The fact that a fugitive has been handed over as a result of cooperation between States does not in itself make the arrest unlawful and does not therefore give rise to any problem under Article 5 of the Convention. Subject to it being the result of cooperation between the States concerned and provided that the legal basis for the order for the fugitive's arrest is an arrest warrant issued by the authorities of the fugitive's State of origin, even an atypical extradition cannot as such be regarded as being contrary to the Convention.

N. v. Finland No.: 38885/02 Type: Judgment Date: 26 July 2005 Articles: Y: 3 Keywords: – asylum – expulsion – family life (separation of family) – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion from Finland to the Democratic Republic of Congo (DRC) following failed applications for asylum and conviction for petty offences in Finland. Interim measure complied with. *Relevant complaint:* The applicant maintained that he had a well-founded fear of persecution in the DRC because of his having worked in the special force in charge of protecting former President Mobutu (DSP), his being of the same Ngbandi ethnicity as the former President and because of his close connections with the former President's family. According to credible and objective human rights reports, corruption and abuse of power remained rampant in the DRC which had to be considered a dictatorship. Should the Congolese authorities discover that a deportee had a political or military profile, or had sought asylum abroad owing to such a background, he or she could be at risk of arbitrary detention and ill-treatment. *Court's conclusions:* Decisive regard must be had to the applicant's specific activities in the DSP, on account of which he would still run a substantial risk of treatment contrary to Article 3 of the Convention, if expelled to the DRC. The risk of ill-treatment might not necessarily emanate from the current authorities of the DRC but from relatives of dissidents who may seek revenge on the applicant for his past activities in the service of President Mobutu. Neither can it be excluded that the publicity surrounding the applicant's asylum claim and appeals in Finland might engender feelings of revenge in relatives of dissidents possibly affected by the applicant's actions in the service of President Mobutu. As the protection which is therefore to be afforded to the applicant under Article 3 of the Convention is absolute the above finding is not invalidated either by the nature of his work in the DSP or by his minor offences in Finland.
Aoulmi v. France No.: 50278/99 Type: Judgment Date: 17 January 2006 Articles: Y: 34; N: 3, 8 Keywords: – expulsion – family life (separation of family) – ill-treatment – interim measure Links: English, French	*Circumstances:* Expulsion from France to Algeria following a conviction for criminal offences in France. Interim measure not complied with. *Relevant complaints:* 1. Expulsion to Algeria would expose the applicant to ill-treatment because the treatment required by his hepatitis is not available in Algeria, where he does not have social security, and because his father was a harki[6], for which he fears reprisals from Islamists. 2. Expulsion to Algeria is contrary to Article 8 of the Convention because his whole family, his daughter, parents, siblings and aunts and uncles live in France. He has no family ties to Algeria where he never returned in 39 years since he left the country, aged four. *Court's conclusions:* 1. Because of the non-compliance with the interim measure, the Court was not able to examine the applicant's complaint properly.

[6]) Muslim Algerian who served as an auxiliary in the French Army (in this case during the Algerian War).

Translations: not available	2. Despite the intensity of the applicant's personal ties with France, the ban from French territory, in light of his conduct and the seriousness of the charges, was ultimately necessary for the defence of order and the prevention of crime.
Al-Moayad v. Germany No.: 35865/03 Type: Decision Date: 20 February 2007 Article: N: 3, 5§1, 6§1, 34 Keywords: – assurances – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Extradition from Germany to the United States of America for the purposes of prosecution on charges of supporting and financing terrorism. The applicant had been lured to travel from Yemen to Germany by an undercover agent working for the United States. *Relevant complaints:* 1. Extradition to the United States violated Article 3 of the Convention because, like other terrorist suspects, the applicant would be subjected to interrogation methods amounting to torture at the hands of the United States authorities. 2. Custody pending extradition had been unlawful, as the applicant's placement under surveillance in and abduction from Yemen had breached public international law. For the same reasons he argued that the extradition proceedings in Germany had not been fair and therefore breached Article 6§1 of the Convention. 3. In the United States of America the applicant would be placed in detention indefinitely without access to a court or a lawyer and therefore risked suffering a flagrant denial of a fair trial, contrary to Article 6§1 of the Convention. 4. German authorities had violated Article 34, second sentence, of the Convention, as they had extradited him to the United States of America despite being notified by his lawyer that he had lodged an application and a Rule 39 request with the Court. *Court's conclusions:* 1. Reports about the interrogation methods used by the United States authorities on persons suspected of involvement in international terrorism concern prisoners detained by the United States authorities outside the United States territory, notably in Guantánamo Bay (Cuba), Bagram (Afghanistan) and some other third countries. German authorities have obtained an assurance from the United States (in the form of a diplomatic note from the United States Embassy), which is binding under public international law, that the applicant will not be transferred to one of the detention facilities outside the United States in respect of which interrogation methods at variance with the standards of Article 3 have been reported; furthermore, German authorities sent a representative to observe the proceedings against the applicant in the United States. In the absence of reports denouncing the ill-treatment of terrorist suspects detained in regular detention facilities within the United States, the applicant has failed to substantiate that he faced a real risk of being subjected to treatment contrary to Article 3 of the Convention during interrogation in custody in

	an ordinary United States prison. In the circumstances of the present case the assurance obtained by the German Government was such as to avert the risk of the applicant's being subjected to interrogation methods contrary to Article 3 of the Convention following his extradition. 2. It was not the respondent State itself – or persons for whose actions it must be deemed responsible – which had taken extraterritorial measures on Yemen's territory aimed at inciting the applicant to leave that country. The present case does not concern the use of force, which could give rise to an issue under Article 5§1 of the Convention; instead, the applicant was tricked by the United States authorities into travelling to Germany. The cooperation between German and United States authorities on German territory pursuant to the rules governing mutual legal assistance in arresting and detaining the applicant do not in itself give rise to any problem under Article 5 of the Convention. Extradition proceedings do not concern a dispute over an applicant's civil rights and obligations; the words "determination ... of a criminal charge" in Article 6§1 of the Convention relate to the full process of examining an individual's guilt or innocence in respect of a criminal offence, and not merely, as is the case in extradition proceedings; therefore, Article 6 of the Convention is not applicable to extradition proceedings. 3. Even the legitimate aim of protecting the community as a whole from serious threats it faces by international terrorism cannot justify measures which extinguish the very essence of a fair trial as guaranteed by Article 6 of the Convention. A flagrant denial of a fair trial undoubtedly occurs where a person is detained because of suspicions that he has been planning or has committed a criminal offence without having any access to an independent and impartial tribunal to have the legality of his or her detention reviewed and, if the suspicions do not prove to be well-founded, to obtain release. A deliberate and systematic refusal of access to a lawyer to defend oneself, especially when the person concerned is detained in a foreign country, must be considered to amount to a flagrant denial of a fair trial. In the circumstances of the present case the assurance obtained by the German Government (see above sub 1) was such as to avert the risk of a flagrant denial of a fair trial following the applicant's extradition. 4. A faxed copy of the application which the applicant's lawyer had intended to send did not reach the German Ministry of Justice. Accordingly the Court cannot consider it established that the Ministry was duly informed that a request under Rule 39 had already been made. The Government stressed that, in accordance with their constant practice – a practice which the Court can confirm – they would have ordered a provisional stay of the applicant's extradition if the Court itself had asked them to await its decision on the applicant's Rule 39 request.
Collins and Akaziebie v. Sweden	*Circumstances:* Expulsion from Sweden to Nigeria following failed application for asylum. *Relevant complaint:* If expelled to Nigeria, there was a real risk that the applicants would be subjected to

No.: 23944/05 Type: Decision Date: 8 March 2007 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	female genital mutilation (FGM). 80-90% of all women had been subjected to FGM in Delta State and that despite the existing legislation in Nigeria banning the practice, the tradition lived on as a result of strong social pressure. *Court's conclusions:* The Court observes that although there are indications that the FGM rate is more prevalent in the south, where Delta State is situated, the alleged rate differs significantly from the background information provided by various institutions, NGOs and the Nigeria Demographic and Health Survey as to the FGM rate for the whole country in 2005, which amounted to approximately 19%, a figure that has declined steadily in the past 15 years. The applicant did not choose to go to another State within Nigeria or to a neighbouring country, in which she could still have received help and support from the father of the child and her own family; instead, she managed to obtain the necessary practical and financial means and accordingly succeeded in travelling from Nigeria to Sweden and applying for asylum; viewed in this light, it is difficult to see why the first applicant, having shown such a considerable amount of strength and independence, cannot protect the second applicant from being subjected to FGM, if not in Delta State, then at least in one of the other states in Nigeria where FGM is prohibited by law and/or less widespread than in Delta State**.** The fact that the applicants' circumstances in Nigeria would be less favourable than in Sweden cannot be regarded as decisive from the point of view of Article 3 of the Convention.
Sultani v. France No.: 45223/05 Type: Judgment Date: 20 September 2007 Articles: N: 3, 4 (Prot. 4) Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	*Circumstances:* Expulsion from France to Afghanistan following failed application for asylum. *Relevant complaint:* Expulsion to Afghanistan would expose the applicant to inhuman and degrading treatment. The hostility of the authorities in his home province, based both on political and ethnic reasons, forced him to flee Afghanistan to save his life. *Court's conclusions:* The Court emphasized, in particular, that the applicant is not himself a former Communist Party leader, but only the son of one of these and that it was not established to what extent he could be personally at risk of repression in Afghanistan.
Nasrulloyev v. Russia No.: 656/06 Type: Judgment Date: 11 October 2007 Articles: Y: 5§1(f), 5§4	*Circumstances:* Extradition from Russia to Tajikistan for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. From 13 to 21 August 2003 the applicant had been detained without any judicial decision, the term of his detention had exceeded the maximum eighteen-month period under Russian law, and the criminal-law

Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	provisions governing detention with a view to extradition did not meet the requirements of clarity and foreseeability. 2. His detention had continued automatically, without any judicial decision or review. *Court's conclusions:* 1. Article 5§1(f) of the Convention does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. Having regard to the inconsistent and mutually exclusive positions of the domestic authorities on the issue of legal regulation of detention with a view to extradition, the Court finds that the deprivation of liberty to which the applicant was subjected was not circumscribed by adequate safeguards against arbitrariness. 2. The detainee has the right to take part in proceedings for examination of the lawfulness of detention under Russian law, make submissions to the court and plead for his or her release; there is nothing, however, in the wording of applicable provisions of Russian law to indicate that these proceedings could be taken on the initiative of the detainee, the prosecutor's application for an extension of the custodial measure being the required element for institution of such proceedings; in the instant case these proceedings were instituted only once in the three years of the applicant's detention and followed an application by a prosecutor. Russian law provided, in principle, for judicial review of complaints about alleged infringements of rights and freedoms which would presumably include the constitutional right to liberty; however, these provisions conferred standing to bring such a complaint solely on "suspects" or "defendants" or, more generally, on "parties to criminal proceedings". Under Russian criminal law, the applicant was neither a "suspect" nor a "defendant" because there was no criminal case against him in Russia. Furthermore, the Russian authorities consistently refused to recognise the applicant's position as a party to criminal proceedings on the ground that no investigation against him had been initiated in Russia. That approach obviously undermined his ability to seek judicial review of the lawfulness of his detention.
Kafkaris v. Cyprus No.: 21906/04 Type: Judgment Date: 12 February 2008 Articles: Y: 7; N: 3, 5§1, 14 Keywords: – custody (lawfulness) – discrimination	*Circumstances:* Life sentence served in Cyprus. *Relevant complaint:* The whole or a significant part of the period of the applicant's detention for life was a period of punitive detention that exceeded the reasonable and acceptable standards for the length of a period of punitive detention as required by the Convention. Under the legislative scheme currently in force in Cyprus there was no parole board system and no provision was made for the granting of parole to prisoners. Thus, the principal purpose of the sentence of imprisonment imposed by the Cypriot courts and subsequently enforced by the relevant authorities was punitive. The unexpected reversal of his legitimate expectations for release and his continuous detention beyond the date which had been set for his release by the prison authorities had left

– life sentence Links: English, French Translations: Armenian	him in a state of distress and uncertainty over his future for a significant amount of time. In his opinion, this amounted to inhuman and degrading treatment. *Court's conclusions:* The imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention. A life sentence does not become "irreducible" by the mere fact that in practice it may be served in full. It is enough for the purposes of Article 3 of the Convention that a life sentence is de jure and de facto reducible. Existence of a system providing for consideration of the possibility of release is a factor to be taken into account when assessing the compatibility of a particular life sentence with Article 3 of the Convention. In this context, however, it should be observed that a State's choice of a specific criminal justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision the Court carries out at European level, provided that the system chosen does not contravene the principles set forth in the Convention. The President of Cyprus, with the agreement of the Attorney-General, can order by decree the conditional release of a prisoner at any time; it is clear that in Cyprus such sentences are both de jure and de facto reducible.
Saadi v. Italy No.: 37201/06 Type: Judgment Date: 28 February 2008 Articles: Y: 3 Keywords: – assurances – expulsion – ill-treatment Links: English, French Translations: Azeri, Italian	*Circumstances:* Expulsion from Italy, following serving a sentence in Italy imposed for criminal conspiracy of terrorist character and following failed asylum application, to Tunisia where he was sentenced in absentia by a military court to 20 years of imprisonment for membership in a terrorist organization and incitement of terrorism. Interim measure complied with. At request by Italy, Tunisia provided assurances that the applicant, if expelled to Tunisia would enjoy safeguard of the relevant Tunisian laws and that the Tunisian laws in force guarantee and protect the rights of prisoners in Tunisia and secure to them the right to a fair trial and pointed out that Tunisia has voluntarily acceded to the relevant international treaties and conventions. Interim measure complied with. *Relevant complaint:* The applicant submitted that it was "a matter of common knowledge" that persons suspected of terrorist activities, in particular those connected with Islamist fundamentalism, were frequently tortured in Tunisia. The applicant's family had received a number of visits from the police and was constantly subject to threats and provocations; his sister had twice tried to kill herself because of this. A mere reminder of the treaties signed by Tunisia could not be regarded as sufficient. *Court's conclusions:* It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. Where such evidence is adduced, it is for the Government to dispel any doubts about it. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances. To that end, as

	regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department. The mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 of the Convention. Where the sources available describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence. The scale of the danger of terrorism today and the threat it presents to the community must not call into question the absolute nature of Article 3 of the Convention. The Court cannot accept that a distinction must be drawn between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole. Either the evidence adduced before the Court reveals that there is a substantial risk if the person is sent back or it does not. The prospect that he may pose a serious threat to the community if not returned does not reduce in any way the degree of risk of ill treatment that the person may be subject to on return. The visits by the International Committee of the Red Cross cannot exclude the risk of subjection to ill-treatment. The existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention.
Ismoilov and others v. Russia No.: 2947/06 Type: Judgment Date: 24 April 2008 Articles: Y: 3, 5§1, 5§4, 6§2 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – presumption of innocence	*Circumstances:* Extradition of twelve Uzbek and one Kyrgyz nationals from Russia to Uzbekistan for the purposes of prosecution for membership in a terrorist organization, supporting terrorism, attempting a violent overthrow of the constitutional order of Uzbekistan and some other offences connected with the mass disorders in Andijan in 2005. The applicants were granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaints:* 1. Torture in Uzbekistan was widespread in detention facilities and individuals charged in connection with the Andijan events were at an increased risk of ill-treatment. Uzbek authorities had given the same assurances in the extradition proceedings of four Uzbek nationals from Kyrgyzstan and that those assurances had proved to be ineffective. As the Uzbek authorities refused to give representatives of the international community access to the extradited individuals, it was not possible to monitor their compliance with the assurances. Uzbek authorities knew about the applicants' application for asylum and their application before the Court, which had further intensified the risk of torture. 2. The provisions of Russian law setting the maximum period of detention were not respected.

Links: English, French Translations: Italian	3. The applicants had been unable to obtain judicial review of their detention either in criminal, or in civil proceedings. 4. The wording of the extradition decisions violated the applicants' right to be presumed innocent. *Court's conclusions:* 1. Given that the practice of torture in Uzbekistan is described by reputable international experts as systematic, the assurances from the Uzbek authorities did not offer a reliable guarantee against the risk of ill-treatment. 2. In the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to extradition and setting up time-limits for such detention, the deprivation of liberty to which the applicants were subjected was not circumscribed by adequate safeguards against arbitrariness. 3. The applicants were caught in a vicious circle of shifted responsibility where no domestic court, whether civil or criminal, was capable of reviewing the alleged unlawfulness of their detention. Proceedings for examination of the lawfulness of custody under Russian criminal law can be initiated only by prosecutor. 4. The extradition proceedings were a direct consequence, and the concomitant, of the criminal investigation pending against the applicants in Uzbekistan. Therefore, there was a close link between the criminal proceedings in Uzbekistan and the extradition proceedings justifying the extension of the scope of the application of Article 6§2 of the Convention to the latter. The decision to extradite the applicants does not in itself offend the presumption of innocence. However, the applicants' complaint is not directed against the extradition as such, but rather against the reasoning contained in the extradition decisions. An extradition decision may raise an issue under Article 6§2 of the Convention if supporting reasoning which cannot be dissociated from the operative provisions amounts in substance to the determination of the person's guilt.
Garabayev v. Russia No.: 38411/02 Type: Judgment Date: 7 June 2008 Articles: Y: 3, 5§1(f), 5§3, 5§4, 13 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody)	*Circumstances:* Extradition of a dual Russian and Turkmen citizen from Russia to Turkmenistan for the purposes of prosecution and his temporary surrender from Turkmenistan back to Russia for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. Russian authorities had failed to take into account information which indicated that there existed a real risk of torture and politically motivated persecution. He had been shown the extradition order only on the day of surrender to Turkmenistan, and had had no opportunity to contact his lawyer or to challenge it. 2. At the time of his arrest, the applicant had been holding Russian nationality and could not be extradited to Turkmenistan; his detention for that purpose had, therefore, been unlawful from the outset. 3. The inclusion of the applicant's name on the international wanted list by the Russian Prosecutor General's

– extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment Links: English, French Translations: not available	Office was unlawful because he had been extradited by the same office to Turkmenistan in October 2002 and had not absconded from justice. The Russian court, when ordering the applicant's detention in absentia, had failed to investigate the circumstances of the case. *Court's conclusions:* 1. In assessing the evidence on which to base the decision whether there has been a violation of Article 3, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un-rebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account. 2. The applicant's custody was not confirmed by a Russian court, contrary to the provisions of Russian law, which requires such authorisation unless the custody in the country seeking extradition has been ordered by a court. Therefore the applicant's custody pending extradition was not in accordance with a "procedure prescribed by law" as required by Article 5§1 of the Convention. Furthermore, the applicant's extradition was in the end found unlawful in view of his Russian nationality, as domestic legislation excludes, in non-ambiguous terms, the extradition of Russian nationals. The information about the applicant's nationality had already been available to the competent authorities at the time of the applicant's arrest because the applicant and his lawyer had raised the issue and his Russian passport had been in his extradition file. On that basis the Moscow City Court declared the applicant's custody for the purpose of extradition unlawful from the outset. The Court considers that the procedural flaw in the order authorizing the applicant's custody was so fundamental as to render it arbitrary and ex facie invalid. Remedies must be made available during a person's custody with a view to that person obtaining speedy judicial review of the lawfulness of the detention capable of leading, where appropriate, to his or her release. The accessibility of a remedy implies, inter alia, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy. 3. The mere possibility of a court issuing an arrest warrant in absentia in a situation where a person flees from justice, especially when he or she is placed on the international wanted list, does not conflict with the provisions of the Convention.
Shchebet v. Russia No.: 16074/07 Type: Judgment Date: 12 June 2008 Articles: Y: 3, 5§1, 5§4	*Circumstances:* Extradition from Russia to Belarus for the purposes of prosecution. *Relevant complaints:* 1. The applicant had been detained without a judicial warrant in excess of the forty-eight-hour period established by the Russian Constitution. 2. The applicant submitted that a complaint to a court about the unlawfulness of her detention would have

Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) – ill-treatment Links: English only Translations: not available	been ineffective because the Prosecutor General's Office had a two-fold duty of making a case for holding her in custody and ensuring respect for her rights. She further complained that she had not been taken to the hearing before the competent Russian Court. *Court's conclusions:* 1. No record of the applicant's arrest was drawn up upon her apprehension (the police officers believed that an arrest record was not required in the framework of extradition proceedings). Irrespective of whether their interpretation of the domestic law was correct or not, the absence of an arrest record must in itself be considered a most serious failing, as unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention. Similar to paragraph 4 of Article 16 of the European Convention on Extradition, Article 62 of the Minsk Convention establishes an additional guarantee against an excessive duration of provisional arrest pending receipt of a request for extradition. It does not indicate that a person may be detained for forty days but rather requires that the person should be released upon expiry of the fortieth day if the request has not been received in the meantime. In other words, even though under domestic law detention could be ordered for a period exceeding forty days, Article 62 of the Minsk Convention requires the domestic authorities to release anyone who has been detained for more than forty days in the absence of a request for extradition. 2. Applicable provisions of Russian law conferred standing to bring a complaint solely on "parties to criminal proceedings". The Russian authorities consistently refused to recognize the applicant's position as a party to criminal proceedings. That approach obviously negated her ability to seek judicial review of the lawfulness of her custody.
Ryabikin v. Russia No.: 8320/04 Type: Judgment Date: 19 June 2008 Articles: Y: 3, 5§1(f), 5§4 Keywords: – assurances – asylum	*Circumstances:* Extradition from Russia to Turkmenistan for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. Russian authorities had failed to take into account information which indicated that there existed a real risk of torture and ethnically motivated persecution in Turkmenistan. Torture and ill-treatment were widespread among detainees in Turkmenistan, and as a member of an ethnic minority the applicant would be in a particularly vulnerable situation. 2. Detention pending extradition had been unlawful because the procedure prescribed by the domestic and

– custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	international legislation was not complied with. The proceedings had not been conducted with the requisite diligence and the detention was therefore arbitrary. *Court's conclusions:* 1. Evidence from a range of objective sources demonstrates that extremely poor conditions of detention, as well as ill-treatment and torture, remain a great concern for all observers of the situation in Turkmenistan. The protection afforded by Article 3 is wider than that provided by Article 33 of the 1951 Convention relating to the Status of Refugees. Even accepting that assurances were given, the reports noted that the authorities of Turkmenistan systematically refused access by international observers to the country, and in particular to places of detention. In such circumstances the Court is bound to question the value of the assurances that the applicant would not be subjected to torture, given that there appears to be no objective means of monitoring their fulfillment. If extradited to Turkmenistan, the applicant would almost certainly be detained and runs a very real risk of spending years in prison. There are sufficient grounds for believing that he would face a real risk of being subjected to treatment in violation of Article 3 of the Convention. 2. The applicant remained in detention for twelve months and eighteen days. As the Government admitted in their observations and as has been stated on several occasions by the domestic authorities, the proceedings relating to his extradition were "suspended" for most of that period. While the Government referred to the interim measure indicated by the Court under Rule 39 of the Rules of Court, this argument cannot be employed as a justification for the indefinite detention of persons without resolving their legal status. In the present case it does not appear that the applicant's detention was in fact justified by the pending extradition proceedings, in the absence of any such decision taken to date.
Soldatenko v. Ukraine No.: 2440/07 Type: Judgment Date: 23 October 2008 Articles: Y: 3, 5§1(f), 5§4, 13 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal)	*Circumstances:* Extradition from Ukraine to Turkmenistan for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. The lack of information about the state of the proceedings for the applicant's extradition and the means of challenging it, as well as his lack of access to the material in the case file and to legal assistance, seriously hindered the applicant's effective access to the courts. In Turkmenistan there was a practice of torturing people during investigation to extract confessions and the applicant would face a risk of appalling conditions of detention. The lack of judicial supervision of detention in Turkmenistan excluded even minimum control over observance of his rights during his detention. He would be at risk of even more cruel forms of ill-treatment because he was a Russian and not an ethnic Turkmen. Relevant international materials demonstrate that Turkmenistan constantly ignored its obligations under major human rights treaties and failed to implement recommendations of international organizations and to cooperate with their

– ill-treatment Links: English only Translations: Russian	monitoring bodies. In these circumstances the applicant doubted the ability of the Turkmen authorities, on assuming the obligation to observe his rights, to supervise the implementation of these obligations by State agents. He considered that, whatever assurances the Government of Turkmenistan might present to the Government of Ukraine, they could not guarantee the observance of these assurances because of the lack of an effective system of torture prevention. 2. Prior to 30 January 2007, when the Russian General Prosecutor's Office had received the official request for the applicant's extradition, his detention had fallen within the ambit of Article 5§1(c) of the Convention. Only after that date could the detention be qualified as being "with a view to extradition". *Court's conclusions:* 1. Reports of the US State Department and of the United Nations Secretary-General equally noted very poor prison conditions, including overcrowding, poor nutrition and untreated diseases and that allegations of torture and ill-treatment are not investigated by the competent Turkmen authorities. Bearing in mind the authority and reputation of the authors of these reports, the seriousness of the investigations by means of which they were compiled, the fact that on the points in question their conclusions are consistent with each other and that those conclusions are corroborated in substance by other sources, the Court does not doubt their reliability. In so far as the applicant alleged that he would face a risk of treatment or punishment which is contrary to Article 3 of the Convention because of his ethnic origin, there is no evidence in the available materials that the criminal suspects of non-Turkmen origin are treated differently from the ethnic Turkmens. From the materials considered above it appears that any criminal suspect held in custody counter a serious risk of being subjected to torture or inhuman or degrading treatment both to extract confessions and to punish for being a criminal. Despite the fact that the applicant is wanted for relatively minor and not politically motivated offence, the mere fact of being detained as a criminal suspect in such a situation provides sufficient grounds for fear that he will be at serious risk of being subjected to treatment contrary to Article 3 of the Convention. It is not at all established that the First Deputy Prosecutor General of Turkmenistan or the institution which he represented was empowered to provide such assurances on behalf of the State. Given the lack of an effective system of torture prevention, it would be difficult to see whether such assurances would have been respected. The international human rights reports also showed serious problems as regards the international cooperation of the Turkmen authorities in the field of human rights and categorical denials of human rights violations despite the consistent information from both intergovernmental and nongovernmental sources. In the light of the above findings, the Court cannot agree with the Government that the assurances given in the present case would suffice to guarantee against the serious risk of ill-treatment in case of extradition.

	2. The Court accepts the Government's submission that the Minsk Convention, being part of the domestic legal order, is capable of serving as a legal basis for extradition proceedings and for detention with a view to extradition. Article 5§1(f) of the Convention, however, also requires that the detention with a view to extradition should be effected "in accordance with a procedure prescribed by law". The Minsk Convention does not provide for a particular procedure to be followed in the requested State which could offer safeguards against arbitrariness.
Khudyakova v. Russia No.: 13476/04 Type: Judgment Date: 8 January 2009 Articles: Y: 5§1(f), 5§4; N: 3, 5§2, 6§2, 8, 12 Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – custody (right to be informed of the reasons for arrest) – extradition (custody) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Kazakhstan for the purposes of prosecution. Extradition denied for lapse of time under Russian law. *Relevant complaints:* 1. Neither the Russian criminal-law provisions governing detention with a view to extradition, nor the 1993 Minsk Convention met the requirements of clarity and foreseeability. Thus, due to this confusion in domestic law, the applicant had been detained from 7 August to 2 September 2003 without any judicial decision and the term of her detention had far exceeded the period provided for by the domestic law and had never been lawfully extended. 2. Neither at the moment of her arrest, nor at any later stage had the applicant been informed why she had been arrested and detained. 3. The applicant complained of delays in the review of the lawfulness of her detention. She claimed, in particular, that the complaint filed by her lawyer on 15 August 2003 with the Petrozavodsk Town Court had only been examined on 2 September 2003, that is eighteen days later. *Court's conclusions:* 1. The Government's argument that the applicant and her lawyer had contributed to the prolongation of her detention and were directly responsible for the applicant's continued detention is regrettable. Shifting the responsibility for detention to the applicant when she was under the full control of the authorities is neither relevant, nor reasonable. Even assuming that the applicant's actions did protract the extradition procedure as the authorities were under obligation to examine her applications for asylum and her self-incriminating statements in respect of a crime committed in Russia, at this juncture two separate issues should be distinguished: the applicant's detention and her extradition. The question as to when the Prosecutor General was going to decide on the applicant's extradition is of no relevance to the Court for the purpose of examining the lawfulness and length of the applicant's detention. What is at stake is the applicant's right to liberty pending the decision on extradition. It should be noted that the domestic courts had a possibility to annul the measure of restraint or to change it to a more lenient one during the time the question of the applicant's extradition was under consideration.

	2. Whilst this information must be conveyed 'promptly', it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features. 3. The remedies must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy. There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence. The same logic may be applicable to detention pending extradition when the investigation is pending.
Gasayev v. Spain No.: 48514/06 Type: Decision Date: 17 February 2009 Articles: N: 2, 3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment – life sentence Links: French only Translations: not available	*Circumstances:* Extradition of a Russian national of Chechen origin from Spain to Russia (Chechnya). *Relevant complaint:* The applicant claimed that, if extradited to Russia, he would incur a risk of ill-treatment and his life would be endangered because he was of Chechen origin. *Court's conclusions:* The Spanish Courts concluded, after an in-depth examination of the assurances provided by the Russian authorities that the applicant would not be subject to the death penalty. In the absence of any evidence to the contrary, the Court will not overturn conclusions which have been reached by domestic Courts after an adversarial assessment of a request for extradition. The Court further considers that the Spanish courts rightfully considered that the assurances provided set aside any danger that the applicant might incur an irreducible life sentence. The Court notes that the assurances according to which the applicant's prison conditions would respect the requirement set forth by Article 3 of the Convention are sufficient because they provide for an effective mechanism to monitor compliance of the Russian authorities with the content of the assurances.
Ben Khemais v. Italy No.: 246/07 Type: Judgment Date: 24 February 2009 Articles: Y: 3, 34 Keywords: – assurances – expulsion	*Circumstances:* Expulsion of a Tunisian national from Italy after serving a sentence for assault, to Tunisia where he was sentenced in absentia by a military Court to 10 years imprisonment for terrorist offences. After the applicant was expelled, Tunisia, at the request of Italy, provided assurances that the applicant would enjoy the safeguard of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure not complied with. *Relevant complaints:* 1. The applicant claimed that several Tunisian nationals expelled to Tunisia on the ground that they were

– ill-treatment – interim measure Links: French only Translations: not available	suspected of terrorism had no longer shown any signs of life. Reports published by Amnesty International and the US Department of State demonstrating that torture was used in Tunisia confirmed that claim. The applicant's family was subjected to threats and provocations. The assurances provided by Tunisia are not reliable and were provided after the applicant was expelled which demonstrates that Italy accepted the risk that he might be subjected to ill-treatment. 2. The fact that the applicant was expelled on the basis of a different decision than the one referred to in the Court's interim measure is not relevant with regard to the obligations of Italy under Article 34 of the Convention. The Italian authorities cannot circumvent their duty to respect the Court's interim measures on the pretext of a new decision on expulsion and its immediate execution. *Court's conclusions:* 1. The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of ill-treatment is firmly established. The existence of a risk of ill-treatment must be assessed primarily with those facts which were known or ought to have been known to the State at the time of expulsion. The Court is not precluded, however, from having regard to information which came to light subsequently and which might be of value in confirming or refuting the appreciation made by the State of the well-foundedness of an applicant's fears. If the elements provided by Tunisian authorities may establish that the applicant was not subjected to ill-treatment during the weeks following his expulsion, there is no knowing what might happen to him in the future. 2. Where a risk of irreparable damage is plausibly asserted, the object of the interim measure is to maintain the status quo pending the Court's determination of the case. There is clear evidence that because of his expulsion, the applicant was unable to submit all relevant arguments in his defence and that the court's judgment is likely to be deprived of its effect. The removal is a serious obstacle that might prevent Italy from honouring its obligations under Articles 1 and 46 of the Convention, to protect the applicant's rights and make reparation for the consequences of any violation found by the Court.
Eminbeyli v. Russia No.: 42443/02 Type: Judgment Date: 26 February 2009	*Circumstances:* Extradition from Russia to Azerbaijan for the purposes of prosecution. Extradition denied on the ground of UNHCR refugee status of the applicant. *Relevant complaints:* 1. Detention had been ab initio unlawful, because he could not be expelled to Azerbaijan having been granted

Articles: Y: 5§1(f), 5§4; N: 3, 5§2, 6, 13 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – extradition (custody) Links: English only Translations: not available	refugee status. 2. The report drawn up immediately after the applicant's arrest included a reference to the arrest warrant issued by a prosecutor of the Republic of Azerbaijan. No further information on the criminal charges against him and their legal characterization and factual basis, or a copy of that arrest warrant, was provided to the applicant. *Court's conclusions:* 1. Having regard to the similar protection Russian law affords against expulsion both to Russian nationals and refugees, the Court does not consider that the conclusion reached in the Garabayev case is altered in the present case. The Court therefore finds that the flaw in the very act of the applicant's arrest was so fundamental as to render it arbitrary and ex facie invalid from the outset. 2. Although the Court considers it regrettable that at the time of his arrest the applicant was not served with a copy of the arrest warrant issued by the prosecutor of the Republic of Azerbaijan, the information provided to the applicant by Russian authorities was sufficient to satisfy their obligation under Article 5§2 of the Convention. In reaching this conclusion, the Court also takes into account the fact that, as it appears, shortly after the arrest the applicant was served with a translation of the arrest warrant.
O. v. Italy No.: 37257/06 Type: Judgment Date: 24 March 2009 Articles: Y: 3 Keyword: – assurances – expulsion – ill-treatment Links: French only Translations: not available	*NOTE: As the case is practically identical to Ben Khemais case, it could be deleted from the list.* *Circumstances:* Expulsion of a Tunisian national from Italy to Tunisia where he had been sentenced in absentia for terrorist offences. At the request of Italy, Tunisia provided assurances that the applicant would enjoy the safeguards of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure complied with. *Relevant complaint:* Reports published by Amnesty International and the US Department of State demonstrate that if expelled to Tunisia, the applicant would be exposed to a tangible and serious risk of violation of the rights protected under Articles 2 and 3 of the Convention. In view of this risk, the mere reminder by Tunisian authorities of the treaties Tunisia has acceded to is not enough. The applicant's family was subjected to threats and provocations. *Court's conclusions:* The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of ill-treatment is firmly established.

Cipriani v. Italy No.: 22142/07 Type: Decision Date: 30 March 2009 Articles: N: 3, 1 (Prot. 6) Keyword: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment Links: French only Translations: not available	*Circumstances:* Extradition of an Italian national to the USA for the purpose of prosecution. At the request of the Italian Court, the US Department of Justice provided an assurance that the applicant was not accused of a "capital felony" and, therefore, that the death penalty was not even potentially applicable in his case. *Relevant complaint:* The applicant claimed that his extradition to the USA exposed him to the risk of being sentenced to the death penalty. The assurances given by the US government did not exclude the possibility that the description of the offense he was accused of be altered to a capital felony as the extradition Treaty between the USA and Italy allowed for such an alteration. The principle of speciality enshrined in the Treaty does not prohibit the requesting State from prosecuting the extradited person when the same facts for which extradition has been granted constitute a differently denominated offense which is extraditable. The absence of certainty regarding the incurred sentence is not compatible with the absolute nature of the prohibition laid down by Protocol No. 6. *Court's conclusions:* The Court noted that the Italian authorities had warded off any risk of a death sentence on the grounds that the applicant was accused of crimes for which such a penalty is not incurred, that the principle of speciality included in the Treaty prohibited the alteration of the denomination of the offense into a capital felony and that the Treaty had been implemented in US law and must therefore be observed by every US Court. These elements were precise and verifiable and their interpretation by Italian authorities is neither manifestly illogical nor arbitrary. The diplomatic assurances provided by the US Department of Justice may be taken into account by the Court when assessing the existence of a real and tangible violation of Article 1 of Protocol No. 6. Nothing in the present case allows to consider that the assurances were not serious and reliable.
Stephens v. Malta (No. 1) No.: 11956/07 Type: Judgment Date: 21 April 2009 Articles: Y: 5§1; N: 5§4, 7, 13 Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition from Spain to Malta for the purposes of prosecution for a criminal offence committed in Spain that was supposed to have effects in Malta (conspiracy to transport drugs from Spain to Malta). *Relevant complaints:* 1. The applicant had not been "lawfully arrested" on reasonable suspicion of having committed "an offence" – the court issuing the warrant for his arrest did not have the authority to do so and the facts of which he was accused did not amount to a triable offence in Malta (as conspiracy committed outside Malta is not actionable in Malta). 2. Inaction of the Maltese authorities vis-à-vis his release in Spain after the arrest warrant had been declared invalid resulted in a further ten-day period of detention. By contacting Interpol, the Maltese authorities sent the message to the wrong address and by means of the wrong courier. At the time, before the coming into force of the European Arrest Warrant, a request for extradition was conducted through diplomatic channels, and only the Minister had the power to halt such requests. However, the AG failed to advise the

	Minister to withdraw the extradition on the basis of the rescinded warrant. *Court's conclusions:* 1. The reasoning of the Civil Court and the Constitutional Court both gave a full explanation of how the law was to be interpreted, making it clear that the facts of which the applicant was accused fell to be considered as an offence under Maltese law. Such interpretation has become customary in domestic practice and was further reaffirmed by the criminal courts which later convicted the applicant. Consequently, the offences of which the applicant was accused constituted a "law" of sufficient "quality" within the meaning of the Court's case-law and nothing suggests that the Maltese courts interpreted the relevant domestic law provisions unreasonably or in such a way as to make punishable acts which would otherwise have remained outside the scope of the relevant criminal law. Their interpretation was not therefore arbitrary so as to render the applicant's detention unlawful also under this respect. 2. Malta had accepted responsibility for the violation of Article 5§1 of the Convention for the initial period of detention irrespective of the fact that the applicant was being detained in Spain.
Sellem v. Italy No.: 12584/08 Type: Judgment Date: 5 May 2009 Articles: Y: 3 Keyword: – assurances – expulsion – ill-treatment Links: French only Translations: not available	*NOTE: As the case is practically identical to Ben Khemais case, it could be deleted from the list.* *Circumstances:* Expulsion of a Tunisian national from Italy to Tunisia where he had been sentenced in absentia by a military Court for terrorist offences. At the request of Italy, Tunisia provided assurances that the applicant would enjoy the safeguards of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure complied with. *Relevant complaint:* The applicant claimed that reports published by Amnesty International and the US Department of State established that if he were expelled to Tunisia, he would be exposed to a tangible and serious risk of ill-treatment. *Court's conclusions:* The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of ill-treatment is firmly established.
Abdolkhani and Karimnia v. Turkey (No. 1) No.: 30471/08 Type: Judgment	*Circumstances:* Expulsion from Turkey to Iraq or Iran of two persons granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaint:* The applicants' removal to Iran would expose them to a real risk of death or ill-treatment, as former members of the PMOI run the risk of being subjected to the death penalty in Iran. In Iraq, they would

Date: 22 September 2009 Articles: Keywords: Y: 3, 5§1, 5§2, 5§4, 13 – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – expulsion – ill-treatment Links: English, French Translations: not available	be subjected to ill-treatment as they are considered by Iraqi authorities to be allies of the former Saddam Hussein regime. *Court's conclusions:* Owing to the absolute character of the right guaranteed by Article 3 of the Convention, the existence of the obligation not to expel is not dependent on whether the risk of ill-treatment stems from factors which involve the responsibility, direct or indirect, of the authorities of the receiving country. Article 3 of the Convention may thus also apply in situations where the danger emanates from persons or groups of persons who are not public officials. What is relevant in this context is whether an applicant is able to obtain protection against and seek redress for the acts perpetrated against him or her. Unlike the Turkish authorities, the UNHCR interviewed the applicants and had the opportunity to test the credibility of their fears and the veracity of their account of circumstances in their country of origin. Following these interviews, it found that the applicants risked being subjected to an arbitrary deprivation of life, detention and ill treatment in their country of origin. In the light of the above, the Court finds that there are serious reasons to believe that former or current PMOI members and sympathisers could be killed and ill-treated in Iran and that the applicants used to be affiliated to this organisation. Moreover, in the light of the UNHCR's assessment, there exist substantial grounds for accepting that the applicants risk a violation of their right under Article 3 of the Convention, on account of their individual political opinions, if returned to Iran. The indirect removal of an alien to an intermediary country does not affect the responsibility of the expelling Contracting State to ensure that he or she is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention. Given that the applicants' deportation to Iraq would be carried out in the absence of a legal framework providing adequate safeguards against risks of death or ill-treatment in Iraq and against the applicants' removal to Iran by the Iraqi authorities, the Court considers that there are substantial grounds for believing that the applicants risk a violation of their rights under Article 3 of the Convention if returned to Iraq.
Dubovik v. Ukraine Nos.: 33210/07 & 41866/08 Type: Judgment Date: 15 October 2009 Articles: Y: 5§1, 5§4, 5§5 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody)	*Circumstances:* Extradition from Ukraine to Belarus for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. The applicant's extradition to Belarus would expose her to a risk of torture and unfair trial, contrary to Articles 3 and 6 of the Convention. After the extradition proceedings were discontinued at the request of the Belarus authorities and the applicant was released, she submitted that the risk of her extradition to Belarus persisted and that nothing prevented the General Prosecutor's Office of Belarus from requesting her extradition again. 2. Ukrainian authorities had had no grounds for reasonable suspicion that the applicant had committed a crime – therefore, her detention prior to receipt of the extradition request had been contrary to

Links: English only Translations: Russian	Article 5§1(c) of the Convention. Her detention on 26 July 2007 had had no legal basis, since it had not been warranted by a judicial decision and had not been aimed at preventing or discontinuing a crime. Since the date when she received refugee status, with the exception of the period when it was suspended, none of the grounds listed in Article 5§1 of the Convention was applicable to her detention, as the domestic law prohibited removal of refugees from the territory of Ukraine. *Court's conclusions:* 1. Although the possibility of the renewal of such extradition proceedings against the applicant cannot be excluded, there is nothing to suggest that the applicant is at an imminent risk of removal from the Ukrainian territory or that any valid decision by the Ukrainian authorities on such removal exists at the moment. 2. Relying on its previous judgments in *Soldatenko* and *Svetlorusov*, the Court found a violation of Article 5§1 of the Convention in connection with the period of custody between 26 July 2007 and 5 March 2008. For the period of custody between 5 March 2008 and 25 February 2009, the Court notes that its interim measure concerned the applicant's removal from Ukraine, and did not require her detention. Without more, it cannot therefore provide a basis in domestic law for the applicant's custody as submitted by the Government. The Government have not explained how, if the applicant could not be removed due to her refugee status, her detention could have been "with a view to extradition" within the meaning of Article 5 as regards the period from 5 March 2008 to 18 April 2008. There has accordingly been a violation of Article 5§1 of the Convention with respect to this period of the applicant's detention too.
Kaboulov v. Ukraine No.: 41015/04 Type: Judgment Date: 19 November 2009 Articles: Y: 3, 5§1, , 5§1(f), 5§2, 5§4, §5, 13, 34; N: 2 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest)	*Circumstances:* Extradition from Ukraine to Kazakhstan for the purposes of prosecution that could result in imposition of death penalty. Interim measure complied with. *Relevant complaints:* 1. The assurances given by Kazakhstan concerning moratorium imposed on death penalty were insufficient as the moratorium could be lifted at any time and the charges against the applicant could be reclassified to carry death penalty. 2. There was a danger that the applicant would be subjected to ill-treatment on account of the possible application of the death penalty and the time spent awaiting its execution, the poor conditions of detention in Kazakhstan, the lack of proper medical treatment and assistance in detention facilities and the widespread practice of torture of detainees. 3. The applicant he had found out the real reasons for his detention, namely that he was wanted by the authorities of Kazakhstan, only after more than 20 days passed between the moment of his detention on and the time of his notification, which could not be seen as "prompt".

– death penalty – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Russian	*Court's conclusions:* 1. There is no suggestion that the moratorium on enforcement is likely to be lifted. The request for the applicant's extradition was submitted under Article 96§1 of the Criminal Code (murder) and the international search warrant issued by the authorities of Kazakhstan contained reference to aggravated murder (Article 96§2 of the Criminal Code); the Government of Kazakhstan assured that the applicant would be prosecuted only under Article 96§1 (non-aggravated murder). In the light of all the circumstances of the case, the Court concludes that, even in the unlikely event of the charges against the applicant being amended from "murder" to "aggravated murder", there is no real risk of his being executed, and therefore no violation of Article 2 of the Convention. 2. The Court has had regard to the reports of the various international human and domestic human rights NGOs, the US State Department and the submissions made by the Helsinki Federation for Human Rights. According to these materials, there were numerous credible reports of torture, ill-treatment of detainees, routine beatings and the use of force against criminal suspects by the Kazakh law-enforcement authorities to obtain confessions. All the above reports equally noted very poor prison conditions, including overcrowding, poor nutrition and untreated diseases. It is also reported that allegations of torture and ill-treatment are not investigated by the competent Kazakh authorities. The Court does not doubt the credibility and reliability of these reports. Furthermore, the respondent Government have not adduced any evidence, information from reliable sources or relevant reports capable of rebutting the assertions made in the reports above. In so far as the applicant alleged that he would face a risk of torture with a view to extracting a confession, there is no evidence that there is a real and imminent risk of him, personally, being subjected to the kind of treatment proscribed by Article 3. However, from the materials referred to above it appears that any criminal suspect held in custody runs a serious risk of being subjected to torture or inhuman or degrading treatment, sometimes without any aim or particular purpose. Thus, the Court accepts the applicant's contention that the mere fact of being detained as a criminal suspect, as in the instant case, provides sufficient grounds to fear a serious risk of being subjected to treatment contrary to Article 3 of the Convention. The assurances of the Kazakhstan General Prosecutor's Office concerning death penalty do not specifically exclude that the applicant would be subjected to treatment contrary to Article 3 of the Convention, and so cannot suffice to exclude the serious risks referred to above. 3. A forty minutes' delay in informing the applicant of the reasons for his arrest, as alleged by the Government, would not, *prima facie*, raise an issue under Article 5§2 of the Convention. However, the only document relied on by the Government is the detention record referred to above, and it does not record the time or date of the applicant's signature. Further, it appears from the records of the sobering up

	facility that the applicant was not at the police station forty minutes after his arrest, but at the facility. There is thus no reliable indication of whether, and if so when the applicant was informed that his detention was with a view to extraditing him to Kazakhstan.
King v. United Kingdom No.: 9742/07 Type: Decision Date: 26 January 2010 Articles: N: 3, 6, 8 Keywords: – assurances – extradition (grounds for refusal) – fair trial – family life (separation of family) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition of a British national from the United Kingdom to Australia for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. If extradited and convicted, there was a real risk that the applicant would be sentenced to life imprisonment without parole. 2. The applicant would suffer a flagrant denial of justice since he would be unable to obtain legal aid and, furthermore, he would be unable to secure the attendance of witnesses for his defence who would have to travel from Europe to Australia to attend the trial since the Australian authorities were only prepared to allow video link evidence for non-contentious testimony. The Australian legal-aid budget would not meet the cost of travel. This would infringe the right to equality of arms, the right to legal assistance and the right to obtain the attendance and examination of witnesses. 3. The extradition would constitute a disproportionate interference with the applicant's right to respect for his family life. *Court's conclusions:* 1. A sentence of life imprisonment without parole is unlikely to be imposed in this case and thus there is no real risk of the applicant serving such a sentence if convicted in Australia. The Australian authorities have distinguished that case from the present one by indicating that, if the applicant is convicted, the prosecution will not submit to the court that a sentence of life imprisonment without parole is an appropriate sentencing option. No significance can be attached to the absence of any diplomatic assurance from the Australian Government that a sentence of life imprisonment with no non-parole period will not be sought and no fault can be attached to the United Kingdom Government for failing to seek such an assurance; both Governments were entitled to take the view that, since such a sentence was highly unlikely, no such assurance was necessary. 2. The applicant has failed to demonstrate that his trial in Australia would give rise to a breach of Article 6 of the Convention, still less that it would amount to a flagrant denial of justice of the kind contemplated by the Court in *Soering* and *Mamatkulov*. The applicant has failed to demonstrate that the Australian authorities would not give due consideration to any application for legal aid he might choose to make. Article 6§3(d) of the Convention does not guarantee the accused an unlimited right to secure the appearance of witnesses in court: it is for the domestic courts to decide whether it is appropriate to call a

	witness. 3. Mindful of the importance of extradition arrangements between States in the fight against crime (and in particular crime with an international or cross-border dimension), the Court considers that it will only be in exceptional circumstances that an applicant's private or family life in a Contracting State will outweigh the legitimate aim pursued by his or her extradition. In the applicant's case, the Court notes that he relies on the fact that he has a wife, two young children and a mother in the United Kingdom, whose ill-health would not allow her to travel to Australia. This, in the Court's view, is not an exceptional circumstance which would militate in favour of the applicant's non-extradition. Although the long distance between the United Kingdom and Australia would mean the family would enjoy only limited contact if the applicant were extradited, convicted and sentenced to a term of imprisonment there, the Court cannot overlook the very serious charges he faces. Given those charges, and the interest the United Kingdom has in honouring its obligations to Australia, the Court is satisfied that the applicant's extradition cannot be said to be disproportionate to the legitimate aim served.
Baysakov and others v. Ukraine No.: 54131/08 Type: Judgment Date: 8 February 2010 Articles: Y: 3, 13; N: 2 Keywords: – assurances – death penalty – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Russian	*Circumstances:* Extradition of four people, who had been granted refugee status by Ukrainian authorities, from Ukraine to Kazakhstan for the purposes of prosecution that could result in imposition of death penalty. Interim measure complied with. *Relevant complaints:* 1. The applicants were wanted by the Kazakh authorities for their political activities in that country and if extradited to Kazakhstan they would be tortured by the authorities with the aim of extracting their confessions and subjected to the unacceptable conditions of detention. They argued that the assurances against ill-treatment provided by the Office of the General Prosecutor of Kazakhstan were not legally binding on that State. 2. The first applicant complained under Article 2 of the Convention that, given the charges against him (conspiracy to murder) and the allegedly vague Constitutional provisions on the death penalty, there was a real risk that he would be subjected to capital punishment in Kazakhstan if he was extradited to that country. He also maintained that the moratorium on executions imposed by the President of the Republic of Kazakhstan could be discontinued if the Kazakh Parliament decided that the legislative provisions on the death penalty remained in force. *Court's conclusions:* 1. According to the information concerning the human rights situation in that country obtained from the UN Committee Against Torture, Human Rights Watch and Amnesty International, there were numerous credible reports of torture, ill-treatment of detainees, routine beatings and the use of force against

	criminal suspects by the Kazakh law-enforcement authorities to obtain confessions. All the above reports equally noted very poor prison conditions, including overcrowding, poor nutrition and untreated diseases. The applicants' allegations of political persecution in Kazakhstan were confirmed by the Ukrainian authorities in the decision by which the applicants were granted refugee status. The assurances that the applicants would not be ill-treated given by the Kazakh prosecutors cannot be relied in the present case, for the same reasons as in *Soldatenko*. In particular, it was not established that the First Deputy Prosecutor General of Kazakhstan or the institution which he represented was empowered to provide such assurances on behalf of the State and, given the lack of an effective system of torture prevention, it would be difficult to see whether such assurances would have been respected. 2. The mere possibility of such a risk because of the alleged ambiguity of the relevant domestic legislation cannot in itself involve a violation of Article 2 of the Convention.
Garkavyy v. Ukraine	*See List D*
Klein v. Russia No.: 24268/08 Type: Judgment Date: 1 April 2010 Articles: Y: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – in absentia Links: English only Translations: not available	*Circumstances:* Extradition of an Israeli national from Russia to Colombia for the purposes of enforcement of a sentence of imprisonment combined with a fine imposed in absentia on the basis of reciprocity. Interim measure complied with. *Relevant complaints:* 1. If extradited to Colombia, the applicant would most probably be subjected to ill-treatment contrary to Article 3 of the Convention. Recent reports by the UN Committee Against Torture, the UN Human Rights Committee, the UN High Commissioner for Human Rights, the U.S. State Department and Amnesty International showed a questionable human rights situation in Colombia and provided "compelling evidence about overcrowding, insecurity, corruption, and insufficient budget in the prison system and detention conditions, and deadly violence amongst inmates as well as excessive force and brutality by prison guards. Torture and other cruel, inhuman, or degrading treatment or punishment by police, military and prison guards continued to be reported." 2. The applicant pointed out to an alleged statement by Colombian Vice-President Santos that "'Hopefully they'll hand Klein over to us so [that] he can rot in jail for all the damage he's caused [to] Colombia."; the statement illustrated the serious risk of ill-treatment that the applicant would face once extradited, given that the Vice-President was the second most influential official of the executive branch. 3. The applicant further asserted that diplomatic assurances given by the Colombian Government did not suffice to guarantee him against such risk. *Court's conclusions:* 1. The information from various reliable sources, including those referred to by the applicant, undoubtedly

	illustrates that the overall human-rights situation in Colombia is far from perfect. For instance, State agents are presumed liable for a number of extrajudicial killings of civilians, forced disappearances and arbitrary detentions. The Committee against Torture expressed its concerns that measures adopted or being adopted by Colombia against terrorism and illegal armed groups could encourage the practice of torture. The Court further notes that the evidence before it demonstrates that problems still persist in Colombia in connection with the ill-treatment of detainees. 2. It appears that the statement expressing the wish of a high-ranking executive official to have a convicted prisoner "rot in jail" may be regarded as an indication that the person in question runs a serious risk of being subjected to ill-treatment while in detention. . The Supreme Court of Russia limited its assessment of the alleged individualised risk of ill-treatment deriving from Vice-President Santos's statement to a mere observation that the Colombian judiciary were independent from the executive branch of power and thus could not be affected by the statement in question. The Court is therefore unable to conclude that the Russian authorities duly addressed the applicant's concerns with regard to Article 3 of the Convention in the domestic extradition proceedings. 3. The assurances from the Colombian Ministry of Foreign Affairs to the effect that the applicant would not be subjected to ill-treatment there were rather vague and lacked precision; hence, the Court is bound to question their value. The Court also reiterates that diplomatic assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention.
Charahili v. Turkey No.: 46605/07 Type: Judgment Date: 13 April 2010 Articles: Y: 3, 5§1 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion from Turkey to Tunisia of a person who had been granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaint:* Removal to Tunisia would expose the applicant to a real risk of death or ill-treatment. He had been convicted in absentia and sentenced to imprisonment in Tunisia for membership in an alleged terrorist organization. *Court's conclusions:* The Court must give due weight to the UNHCR's conclusions as to the applicant's claim regarding the risk which he would face if he were to be removed to Tunisia. Unlike the Turkish authorities, the UNHCR interviewed the applicant and tested the credibility of his fears and the veracity of his account of circumstances in his country of origin. Following this interview, it found that the applicant risked being subjected to ill-treatment in his country of origin.
Keshmiri v. Turkey No.: 36370/08	*NOTE: As the case is identical to Abdolkhani and Karimnia case, it could be deleted from the list.* *Circumstances:* Expulsion from Turkey to Iraq or Iran of a person granted refugee status by the UNHCR.

Type: Judgment Date: 13 April 2010 Articles: Y: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	Interim measure complied with. *Relevant complaint:* The applicant's removal to Iran would expose him to a real risk of death or ill-treatment, as former members of the PMOI run the risk of being subjected to the death penalty in Iran. In Iraq, he would be subjected to ill-treatment as he is considered by Iraqi authorities to be an ally of the former Saddam Hussein regime. *Court's conclusion:* Given that the facts of the instant case are almost identical to those in the Abdolkhani and Karimnia case, the Court finds no particular reasons which would require it to depart from its previous conclusion.
Tehrani v. Turkey Nos.: 32940/08 & 41626/08 & 43616/08 Type: Judgment Date: 13 April 2010 Articles: Y: 3, 5§1, 5§4, 13; N: 3 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion from Turkey to Iraq or Iran of a person granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaints:* 1. The applicant's removal to Iraq or Iran would expose him to a real risk of death or ill-treatment. 2. The applicants did not have an effective domestic remedy whereby they could raise their allegations under Articles 2 and 3 of the Convention. *Court's conclusions:* 1. In respect of Article 3 of the Convention, the Court notes in particular that the applicants were ex-members of the PMOI acknowledged as refugees by the UNHCR, and that the situation in Iran or Iraq has not changed since the Court's above-cited Abdolkhani and Karimnia, judgment. 2. Concerning Article 13 of the Convention, the Court notes that it is not clear from the submissions of the parties whether and, if so, to what extent the national authorities examined the applicants' fear of persecution. There has also been a violation of Article 13 of the Convention due to the lack of an automatic suspensive effect in the Turkish asylum procedure.
Trabelsi v. Italy No.: 50163/08 Type: Judgment Date: 13 April 2010 Articles: Y: 3, 34 Keywords: – assurances – expulsion	*Circumstances:* Expulsion of a Tunisian national from Italy, after serving a sentence, to Tunisia where he was sentenced in absentia by a military Court to 10 years imprisonment for terrorist offences. After the applicant was expelled, Tunisia, at the request of Italy, provided assurances that the applicant would enjoy the safeguards of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure not complied with. *Relevant complaints:* 1. The applicant claimed that several Tunisian nationals expelled to Tunisia on the ground that they were

– ill-treatment – interim measure Links: French only Translations: not available	suspected of terrorism had no longer shown any signs of life. Reports published by Amnesty International and the US Department of State demonstrating that torture was used in Tunisia confirmed that claim. The assurances provided are not reliable. 2. The assurances provided by Tunisia only reached Italian authorities 1 month after the expulsion took place. Therefore, expulsion was decided without any formal guarantees provided by Tunisia. *Court's conclusions:* 1. The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of ill-treatment is firmly established. The existence of a risk of ill-treatment must be assessed primarily with those facts which were known or ought to have been known to the State at the time of expulsion. The Court is not precluded, however, from having regard to information which came to light subsequently and which might be of value in confirming or refuting the appreciation made by the State of the well-foundedness of an applicant's fears. 2. Where a risk of irreparable damage is plausibly asserted, the object of the interim measure is to maintain the status quo pending the Court's determination of the case. There is clear evidence that because of his expulsion, the applicant was unable to submit all relevant arguments in his defence and that the Court's judgment is likely to be deprived of its effect. The removal is a serious obstacle that might prevent Italy from honouring its obligations under Articles 1 and 46 of the Convention, to protect the applicant's rights and make reparation for the consequences of any violation found by the Court. In addition, the Government, before expelling the applicant has not requested the lifting of the interim measure, it knew was still in force, and proceeded with the expulsion before obtaining diplomatic assurances it invokes in its observations.
Khodzhayev v. Russia No.: 52466/08 Type: Judgment Date: 12 May 2010 Articles: Y: 3, 5§1, 5§4 Keywords: – assurances – asylum	*Circumstances:* Extradition of an asylum seeker from Russia to Tajikistan for the purposes of prosecution for membership in a proscribed organisation. Interim measure complied with. *Relevant complaints:* 1. If extradited to Tajikistan, the applicant would be subjected to ill-treatment in breach of Article 3 of the Convention. He also claimed that the Russian authorities had failed to assess risks of ill-treatment that he would run in the requesting country. 2. The applicant's ongoing detention pending extradition had been "unlawful": first, until 21 December 2007 he had been detained in the absence of an official request for extradition; secondly, the term of his

– custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	detention had not been extended by the domestic courts. He had not been promptly informed of the reasons for his arrest. His detention had not been subject to any judicial control and he had been deprived of the right to have the lawfulness of his detention reviewed by a court owing to lack of access to a lawyer during the first two weeks of his detention. *Court's conclusions:* 1. The main argument raised by the applicant under Article 3 of the Convention is the danger of ill-treatment in Tajikistan, exacerbated by the nature of the crime that he had been charged with. The Court observes in this respect that he was accused of involvement in the activities of Hizb ut-Tahrir, a transnational Islamic organisation. It reiterates that in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the information contained in recent reports from independent international human-rights-protection associations or governmental sources, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3 of the Convention. The Government's reference to the fact that the applicant did not apply for political asylum immediately after his arrival to Russia does not necessarily refute the applicant's allegations of risks of ill-treatment since the protection afforded by Article 3 of the Convention is in any event broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees. The assurances given in the present case were rather vague and lacked precision; hence, the Court is bound to question their value. 2. The Court takes note of the Government's claim that the applicant's placement in custody was governed by Article 62§1 of the Minsk Convention and observes that this provision allows for up to forty days' custodial detention pending receipt of the official request for extradition from the requesting country. The period that elapsed between the date of the applicant's arrest and the date of issue of the Tajik request for extradition amounts to twenty-four days. In such circumstances the Court has no grounds on which to conclude that the applicant's detention prior to receipt of the Tajik authorities' official request for his extradition, that is, between 27 November and 21 December 2007, was "unlawful" merely owing to the lack of an official request for extradition. However, an issue arises as to whether the judicial authorisation of the applicant's detention given by the Town Court on 30 November 2007 was sufficient to hold the applicant in custody for any period of time – no matter how long – until the decision on the extradition request had been made, or whether the detention was to be reviewed at regular intervals. In the absence of

	any domestic court decision extending the applicant's detention, the Court is bound to conclude that after 29 May 2008, that is, six months after the date of his placement in custody, the applicant was detained in breach of the provisions of Article 109§2 of the CCP and, therefore, his detention pending extradition cannot be considered "lawful" for the purposes of Article 5§1 of the Convention. The Court observes that, as can be seen from the written statement signed by the applicant, on the day of his arrest he studied at least some investigative documents concerning the criminal case instituted against him in Tajikistan and claimed that he had not committed the crimes he had been charged with. In such circumstances the Court considers that the information provided to the applicant by the Russian authorities was sufficient to satisfy their obligation under Article 5§2 of the Convention. The Government failed to show that the existence of the remedies invoked was sufficiently certain both in theory and in practice and, accordingly, that these remedies lack the requisite accessibility and effectiveness under Article 5§4 of the Convention.
Khaydarov v. Russia No.: 21055/09 Type: Judgment Date: 20 May 2010 Articles: Y: 3, 5§1, 5§4 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition of an asylum seeker, recognized by the UNHCR as a person requiring international protection, from Russia to Tajikistan for the purposes of prosecution for membership in an illegal armed group. Interim measure complied with. *Relevant complaints:* 1. If extradited to Tajikistan, the applicant would be subjected to ill-treatment in breach of Article 3 of the Convention. He also claimed that the Russian authorities had failed to assess risks of ill-treatment that he would run in the requesting country. 2. The applicant complained that the wording of the extradition order had violated his right to be presumed innocent, in breach of Article 6§2 of the Convention. *Court's conclusions:* 1. The applicant argued that the risk of his being subjected to ill treatment in Tajikistan was exacerbated by his ethnic Uzbek origin. The Court points out in this connection that instances of discrimination against Uzbeks in Tajikistan have been reported. Furthermore, the applicant brought to the Russian authorities' attention the fact that the charges against him concerned events that had taken place in the aftermath of the civil war. The Court observes in this connection that, according to the US Department of State, several hundred political prisoners, including former opponents of the governing party who fought in the civil war, are being held in Tajikistan. The Court also observes that the Russian Office of the UNHCR, having studied the applicant's case, concluded that the criminal charges of banditry had amounted to disguised persecution "on the grounds of political views attributed to the applicant, since [the Tajik authorities] associate the applicant with anti-governmental activities because he had been a member of militia groups suspected of involvement in the armed conflict of August 1997". In such circumstances the Court considers

	that the applicant's personal situation would be more likely to increase the risk to him of harm in Tajikistan. The Government's reference to the fact that the applicant did not apply for asylum immediately after his arrival in Russia does not necessarily refute his allegations of risks of ill-treatment since the protection afforded by Article 3 of the Convention is in any event broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention Relating to the Status of Refugees. Moreover, it is noteworthy that the Russian Office of the UNHCR acknowledged that, in its opinion, the applicant qualified as a "refugee" within the meaning of the 1951 Convention. The Tajik Prosecutor General's Office's letters of 10 April and 26 May 2009, which the Government described as diplomatic assurances, contained no reference whatsoever to the protection of the applicant from treatment proscribed by Article 3 of the Convention. The Court is struck by the fact that both the City Court and the Supreme Court claimed that the letters from the Tajik Prosecutor General's Office of 10 April and 26 May 2009 had provided assurances that the applicant would not be ill-treated in Tajikistan, whereas it is clear from those documents that no such assurances were given. 2. The Court points out that the extradition order of 20 November 2008 stated that "[t]he actions of [Mr] M. Khaydarov are punishable under the Russian criminal law and correspond to Article 209§2 of the Russian Criminal Code". In the Court's view, the sentence in question refers first and foremost to the classification of the acts with which the applicant was charged in Tajikistan under Russian law. Although the wording employed by the Russian Prosecutor General's Office was rather unfortunate since there was no clear indication of the fact that the applicant had been merely suspected of having committed "actions punishable under the Russian criminal law", the Court considers that the Russian Prosecutor General's Office was referring not to the question whether the applicant's guilt had been established by the evidence – which was clearly not for the determination of the prosecutor issuing an extradition order – but to the question whether there were legal grounds for the applicant's extradition. In such circumstances the Court cannot conclude that the wording of the extradition order amounted to a declaration of the applicant's guilt in breach of the principle of the presumption of innocence.
Gäfgen v. Germany No.: 22978/05 Type: Judgment Date: 6 July 2010 Articles: Y: 3; N: 6§1, 6§3 Keywords: – ill-treatment	*Circumstances:* Use of evidence obtained in violation of Article 3 of the Convention (threat of torture) in criminal trial. Difference between torture and inhuman treatment. *Relevant complaint:* The applicant claimed that during his interrogation by detective officer E. on 1 October 2002, he had been subjected to treatment prohibited by Article 3 of the Convention. Detective officer E. had threatened that "intolerable pain the likes of which he had never experienced" would be inflicted on him if he did not disclose J.'s whereabouts. He had threatened that this pain would be inflicted without leaving any traces and that an officer, specially trained in such techniques, was en route to the police

Links: English, French Translations: Serbian, Turkish	station in a helicopter. Physical injuries had also been inflicted on him during the interrogation. E. had hit him several times on the chest, causing bruising, and on one occasion had pushed him, causing his head to hit the wall. He claimed that he had been threatened by the police at a time when they had already been aware that J. was dead and had therefore been forced to incriminate himself solely in order to further the criminal investigations against him. *Court's conclusions:* The Court has considered treatment to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. Treatment has been held to be "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience. In determining whether a particular form of ill-treatment should be classified as torture, consideration must be given to the distinction, embodied in Article 3 of the Convention, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating. The Court further reiterates that a threat of conduct prohibited by Article 3 of the Convention, provided it is sufficiently real and immediate, may fall foul of that provision. Thus, to threaten an individual with torture may constitute at least inhuman treatment.
Babar Ahmad and others v. United Kingdom (Decision) Nos.: 24027/07, 11949/08 & 36742/08 Type: Decision Date: 6 July 2010 Articles: Y: 3; N: 2, 3, 5, 6, 8, 14 Keywords: – assurances	*NOTE: For the Judgment, see below.* *Circumstances:* Extradition of three British nationals and one person of disputed nationality from the United Kingdom to the United States of America for the purposes of prosecution for various terrorist and terrorism-related offences. *Relevant complaints:* 1. The question whether there was a real risk of designation as enemy combatants could only be assessed in the light of evidence of the United States' approach towards individuals suspected of possessing information on terrorism. The applicants were of potential, ongoing interest as subjects for interrogation to obtain such information. They also submitted an affidavit from an American lawyer who specialised in terrorism cases, in which he stated that the reference to "federal court" in the Diplomatic Notes did not guarantee a trial in the civilian courts but would allow for trial in any court created by the federal

– death penalty – extradition (grounds for refusal) – fair trial – ill-treatment – life sentence Links: English only Translations: not available	government. The applicants also argued that the real risk of designation as enemy combatants did not even require a finding of bad faith; the ambivalent language of the Diplomatic Notes allowed for transfer to Guantánamo Bay after trial or even designation as an enemy combatant in the event of an acquittal. Moreover, the breadth of the counter-terrorism powers of the President of the United States meant the assurances could not be regarded as binding on him. There was the real possibility that he could rely on a change in circumstances after extradition to justify invoking Military Order No. 1. It was not sufficient to rely on the history of extradition arrangements with the United States, as the Government had done: the attitude of the United States Government had changed fundamentally as a result of the events of 11 September 2001. Moreover, when a country regularly practiced a particular form of a violation of the Convention, its assurances in respect of an individual could not remove the risk to that individual. 2. Pursuant to the doctrine of conspiracy in federal criminal law, if it were proved that one of the applicant's alleged co-conspirators had murdered a United States citizen, this would render the first applicant liable to a capital charge. *Court's conclusions:* 1. The Court recognises that, in extradition matters, Diplomatic Notes are a standard means for the requesting State to provide any assurances which the requested State considers necessary for its consent to extradition. It also recognises that, in international relations, Diplomatic Notes carry a presumption of good faith. The Court considers that, in extradition cases, it is appropriate that that presumption be applied to a requesting State which has a long history of respect for democracy, human rights and the rule of law, and which has longstanding extradition arrangements with Contracting States. Consequently, the Court considers that it was appropriate for the High Court, in its judgment concerning the first and second applicants, to accord a presumption of good faith to the United States Government. However, as the Government have observed, the existence of assurances does not absolve a Contracting State from its obligation to consider their practical application. In determining whether this obligation has been met in the present cases, the Court considers that some importance must be attached to the fact that, as in the case of Al-Moayad, the meaning and likely effect of the assurances provided by the United States Government were carefully considered by the domestic courts in the light of a substantial body of material concerning the current situation in the United States of America. The domestic courts were able to do so because the United States Government were a party to those proceedings and were able to adduce evidence such as to assist the those courts with any doubts as to the meaning and effect of the assurances that had been given. In further assessing the practical application of the assurances which have been given by the United States Government, the Court must also attach some importance to the fact that the applicants have been unable to point to a breach of an

	assurance by the United States Government that has been given to the United Kingdom Government (or indeed any other Contracting State) in the context of an extradition request, before or after the events of 11 September 2001. While the applicants and Amnesty International have relied on the alleged breach of assurances given in respect of Diego Garcia, on the basis of the United Kingdom Government's observations, the Court is satisfied that those assurances were given in error and corrected by the United States Government. In any event, the assurances given in the present cases are materially different: they are specific to the applicants and are unequivocal. There is no suggestion that they have been given in error. It is true that these assurances have been given by the United States Government to the United Kingdom Government and not to the applicants. On this basis, Amnesty International has observed in its report that there is no mechanism by which the applicants could enforce the assurances which have been given. However, in the Court's view that would only be relevant if it were established that there was a real risk of a breach of those assurances. 2. It may well be that, as the first applicant has argued, the doctrine of conspiracy would support a capital charge against him. However, the United States prosecutors have already set out the charges which he would face upon extradition and made clear that the death penalty is not sought in respect of any of them. To the extent that, in federal cases, the final decision on whether to seek the death penalty rests with the Attorney-General and not the attorney responsible for the prosecution, there is no reason to suggest that the Attorney-General is any more likely to breach the terms of the United States' assurances than the President. Finally, the Court can find no grounds that would suggest the assurances in respect of the death penalty only apply to the indictments which are pending against the first and third applicants and not to any superseding indictments.
Abdulazhon Isakov v. Russia No.: 14049/08 Type: Judgment Date: 8 July 2010 Articles: Y: 3, 5§1, 5§4, 13 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody)	*Circumstances:* Extradition of an unsuccessful asylum seeker from Russia to Uzbekistan for the purposes of prosecution for active participation in subversive activities of an extremist organization (jihad). *Relevant complaint:* The applicant's extradition to Uzbekistan would subject him to a real risk of torture and ill-treatment and political persecution. *Court's conclusions:* As to the applicant's allegation that detainees suffer ill-treatment in Uzbekistan, the Court has recently acknowledged that this general problem still persists in the country. No concrete evidence has been produced to demonstrate any fundamental improvement in this area in Uzbekistan in the last several years. Given these circumstances, the Court considers that ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan. As to the applicant's personal situation, the Court observes that he was charged with politically motivated crimes. Given that an arrest warrant was issued in respect of the applicant, it is most likely that he would be directly placed in custody after his extradition and would therefore run the

– extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment – nationality Links: English only Translations: not available	serious risk of ill-treatment. The Government did not submit a copy of any diplomatic assurances indicating that the applicant would not be subjected to torture or ill-treatment. Secondly, the Court has already cautioned against reliance on diplomatic assurances against torture from a State where torture is endemic or persistent. Given that the practice of torture in Uzbekistan is described by reputable international experts as systematic, the Court would not be persuaded that assurances from the Uzbek authorities could offer a reliable guarantee against the risk of ill-treatment. *[NOTE: The complaint and the Court's conclusions regarding the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*
~~**Kaushal and others v. Bulgaria**~~ ~~No.: 1537/08~~ ~~Type: Judgment~~ ~~Date: 2 September 2010~~ ~~Articles: Y: 8, 13, 1 (Prot. 7)~~ ~~Keywords:~~ ~~– expulsion~~ ~~– family life (separation of family)~~ ~~Links: English only~~ ~~Translations: not available~~	*The reason, for which violation of Article 8 has been found, is lack of protection against arbitrariness, which the Court found because of the lack of reasoning provided in the decision on the applicant's deportation. Therefore, this case in not really relevant vis-à-vis Article 8 and extradition.*
Y. P. and L. P. v. France No.: 32476/06 Type: Judgment Date: 2 September 2010 Articles: Y: 3 Keywords: – asylum – expulsion – ill-treatment Links: French only Translations: not available	*Circumstances:* Expulsion of a Belarusian couple from France to Belarus after their application for asylum was rejected. Interim measure complied with. *Relevant complaint:* The applicants claimed that if expelled to Belarus they would be at risk of ill-treatment. Y.P was a political activist within the Belarus Popular Front and, as such, was arrested several times and subjected to ill-treatment by Belarus police. He claimed that he was still an active member of that political party. *Court's conclusions:* The expulsion by a contracting State may give rise to an issue with regards to Article 3 of the Convention when there are serious and confirmed reasons to believe that an applicant, if expelled, runs a real risk of being subjected to a treatment contrary to Article 3 of the Convention. In order to assess such a risk, the date to be taken into account is that of the proceedings before the Court and it is therefore necessary to consider information that has come to light after the internal authorities have reached a final decision.

	Although the European Union and the Council of Europe have observed important developments in Belarus, that State does not, as of yet, fulfil the criteria to become a member of the Council of Europe. The Court must examine the personal situation of the applicant and assess the credibility of the story he has presented to the national authorities and the Court. The Court will examine the motives of the national authorities and confront them with the applicant's allegations in light of the information on the country's situation. The Court recalls that the passage of time should not determine the risk run by the applicant without engaging in an assessment of the current policy of Belarus authorities. The applicant's degree of political activism allows to presume that the passage of time does not diminish the risk of ill-treatment.
Chentiev and Ibragimov v. Slovakia Nos.: 21022/08 & 51946/08 Type: Decision Date: 14 September 2010 Articles: N: 2,3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Summary to be added.*
Iskandarov v. Russia No.: 17185/05 Type: Judgment Date: 23 September 2010 Articles: Y: 3, 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) – extradition (grounds for	*Summary to be added.*

refusal) – ill-treatment Links: English only Translations: not available	
Dzhaksybergenov (aka Jaxybergenov) v. Ukraine No.: 12343/10 Type: Judgment Date: 10 February 2011 Articles: Y: 2 (Prot. 4); N: 3, 6 Keyword: – assurances – extradition (grounds for refusal) – fair trial – ill-treatment Links: English only Translations: Russian	*Summary to be added.*
Elmuratov v. Russia No.: 66317/09 Type: Judgment Date: 3 March 2011 Articles: Y: 5§1(f), 5§4; N: 3, 13 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment	*Summary to be added.*

Links: English only Translations: not available	
Toumi v. Italy No.: 25716/09 Type: Judgment Date: 5 April 2011 Articles: Y: 3, 34 Keywords: – assurances – expulsion – ill-treatment – interim measure Links: French only Translations: not available	*NOTE: As the case is practically identical to Ben Khemais case, it could be deleted from the list.* *Circumstances:* Expulsion of a Tunisian national from Italy, after serving a sentence for terrorist offences, to Tunisia. Prior to his expulsion, Tunisia, at the request of Italy, provided assurances that the applicant would enjoy the safeguards of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure not complied with. *Relevant complaints:* 1. The applicant claimed that after his expulsion he was detained 10 days during which he was subjected to ill-treatment and that he runs the risk of being arrested and tortured again at any time. He argued that several Tunisian nationals expelled to Tunisia on the ground that they were terrorists had no longer shown any signs of life. Reports published by Amnesty International and the US Department of State demonstrating that torture was used in Tunisia confirmed that claim. The assurances provided are not reliable. 2. The applicant claims that his expulsion deprived him of his right of individual petition and that he is under constant threat of police retaliation. *Court's conclusions:* 1. The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of ill-treatment is firmly established. The existence of a risk of ill-treatment must be assessed primarily with those facts which were known or ought to have been known to the State at the time of expulsion. The Court is not precluded, however, from having regard to information which came to light subsequently and which might be of value in confirming or refuting the appreciation made by the State of the well-foundedness of an applicant's fears. 2. Where a risk of irreparable damage is plausibly asserted, the object of the interim measure is to maintain the status quo pending the Court's determination of the case. There is clear evidence that because of his expulsion, the applicant was unable to submit all relevant arguments in his defence and that the court's judgment is likely to be deprived of its effect. The removal is a serious obstacle that might prevent Italy from honouring its obligations under Articles 1 and 46 of the Convention, to protect the applicant's rights

	and make reparation for the consequences of any violation found by the Court.
Adamov v. Switzerland No.: 3052/06 Type: Judgment Date: 21 June 2011 Articles: N: 5§1 Keywords: – custody (lawfulness) – extradition (custody) – mutual assistance (hearing witnesses) Links: French only Translations: not available	*Circumstances:* Provisional arrest in view of extradition at the request of the USA of a Russian national who, while visiting Switzerland for family and business reasons, was summoned as a witness in a Swiss criminal case. *Relevant complaints:* 1. The applicant claimed that the Swiss authorities wrongfully deprived him of the safe-conduct rule accrued to him under Article 12 of the 1959 Convention on mutual legal assistance in criminal matters. 2. The applicant argued that Swiss authorities resorted to trickery in order to circumvent the formal conditions applicable to summons and deprive him of the immunity he was entitled to. *Court's conclusions:* 1. The applicant travelled freely to Switzerland and not for the specific purpose of testifying in a criminal proceeding. As the present case did not involve any inter-State cooperation in accordance with mutual legal assistance rules, there is no cause to protect the applicant from detention or prosecution based on prior acts or convictions. By accepting to travel to Switzerland without invoking the guarantees that derive from the relevant instruments, the applicant consciously renounced the benefit of the safe-conduct rule. 2. The words "lawful" and "in accordance with a procedure described by law" in Article 5§1 of the Convention refer to national legislation. The observance of national law is however not sufficient: Article 5§1 of the Convention further requires the adequacy of any deprivation of liberty with the objective of protecting the individual against arbitrary action. The concept of "arbitrary action" goes beyond non-compliance with national law so that a deprivation of liberty may be lawful according to domestic legislation while at the same time being arbitrary and therefore contrary to the Convention. A detention is "arbitrary" when there has been an element of bad faith or trickery. It is not as such contrary to good faith that authorities resort to stratagems to fight crime, although not every trick may be justified. In the present case, the Court notes that the judge summoned the applicant on the basis of information that he was to travel to Switzerland for private reasons and that he was willing to testify. The judge did not trick the applicant into travelling to Switzerland.
Sufi and Elmi v. United Kingdom Nos.: 8319/07 & 11449/07 Type: Judgment Date: 28 June 2011 Articles: Y: 3	*Summary to be added.*

Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	
Ahorugeze v. Sweden No.: 37075/09 Type: Judgment Date: 27 October 2011 Articles: N: 3, 6, 39 Keywords: – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Summary to be added.*
Mokallal v. Ukraine No.: 19246/10 Type: Judgment Date: 10 November 2011 Articles: Y: 5§1; N: 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	*Summary to be added.*
Al Hanchi v. Bosnia and Herzegovina No.: 48205/09 Type: Judgment	*Summary to be added.*

Date: 15 November 2011 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	
A. H. Khan v. United Kingdom No.: 6222/10 Type: Judgment Date: 20 December 2011 Articles: N: 8 Keywords: – asylum – expulsion – family life (separation of family) Links: English only Translations: not available	*Summary to be added.*
J. H. v. United Kingdom No.: 48839/09 Type: Judgment Date: 20 December 2011 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	*Summary to be added.*

Yoh-Ekale Mwanje **v. Belgium** No.: 10486/10 Type: Judgment Date: 20 December 2011 Articles: Y: 3, 5§1(f), 13; N: 3 Keywords: – custody (lawfulness) – expulsion – ill-treatment – interim measure Links: French only Translations: not available	*Circumstances:* Expulsion of a Cameroonian National from Belgium to Cameroon. The applicant, who suffered from an advanced stage of HIV infection, was detained several months in a closed centre pending expulsion and was denied her application for a leave to remain in Belgium on medical grounds. Interim measure complied with. *Relevant complaints:* 1. The applicant claimed that her situation presented exceptional circumstances and that compelling humanitarian reasons pleaded against her expulsion. The appropriate medical treatment for her condition was not available in Cameroon. 2. The applicant argued that the Belgian authorities conducted the expulsion proceeding without assessing the real risk she ran in Cameroon of being subjected to treatment contrary to Article 3 of the Convention. 3. The applicant argued that her deprivation of liberty was unlawful according to Belgian legislation, arbitrary, excessively lengthy and disproportionate with regards to the objective pursued by Belgian authorities. *Court's conclusions:* 1. The fact that the applicant's circumstances would be significantly reduced in case of removal is not sufficient in itself to give rise to a breach of Article 3 of the Convention. Article 3 of the Convention does not place an obligation on the Contracting State to alleviate disparities through the provision of free and unlimited health care to all aliens without a right to stay within its jurisdiction. A finding to the contrary would place too great a burden on the Contracting States. More compelling humanitarian issues must be at stake which relate chiefly to the condition of the persons concerned before the decision to expel them is enforced. The applicant is not in a "critical condition" and is fit to travel. The Court cannot consider that the present case is marked by compelling humanitarian reasons. 2. The Court notes that the only assessment of the possible risk under Article 3 of the Convention was made in the context of the proceedings concerning the applicant's request for leave to remain on medical grounds. The decision refusing to accept the applicant's regularisation on medical grounds is based on an opinion of a medical officer who listed information and considerations of a general nature and ignored the type of treatment the applicant required. The Court can only note that the Belgian authorities dispensed with a careful and thorough examination of the applicant's individual situation before concluding that no risk would arise under Article 3 of the Convention if she were deported to Cameroon and continuing with the expulsion procedure. The applicant was therefore deprived of an effective remedy. 3. The fact that the implementation of an interim measure temporarily prevents the pursuit of the expulsion procedure does not make a detention unlawful, provided that expulsion is still being considered by the authorities and that the extension of detention is not unreasonable. If the ordering of an interim measure has

	no incidence as such on the lawfulness of detention, the latter cannot be based on the likelihood of the Court's delivering its ruling within the time-laid down by the Belgian legislation. While acknowledging that the time-limit for detention has not been exceeded, the Court notes that the authorities knew the applicant's identity, that she resided at a fixed address known to the authorities, that she had always attended as instructed and that she had taken steps to regularise her situation. The applicant was HIV-positive and her health condition had deteriorated during her detention. The Court sees no link between the applicant's detention and the pursued objective of the Government to have her expelled.
Zandbergs v. Latvia No.: 71092/01 Type: Judgment Date: 20 December 2011 Articles: Y: 5§3, 5§4; N: 6§1 Keywords: – custody (judicial review) – custody (length) – extradition (custody) Links: English only Translations: not available	*Summary to be added.*
Ananyev and others v. Russia No.: 42525/07 & 60800/08 Type: Judgment Date: 10 January 2012 Articles: Y: 3 Keywords: – ill-treatment Links: English only Translations: not available	*Circumstances:* No direct connection with mutual judicial cooperation in criminal matters (purely domestic criminal proceedings), relevant for assessing real risk of violation of Article 3 of the Convention. *Relevant complaints:* 1. Unsatisfactory conditions of detention in remand prisons represented a structural problem in Russia. Repeated applications to the Court in connection with this issue proved the existence and reality of the problem. Although the Russian authorities had undertaken some insignificant and sporadic measures to improve the conditions, those measures had proved to be insufficient owing to inadequate financing and the extensive use of custodial measures as a means of prevention. 2. The applicants complained under Article 3 of the Convention that they had been detained at remand prisons IZ-67/1 (Mr Ananyev) and IZ-30/1 (Mr Bashirov) in conditions that had been so harsh as to constitute inhuman and degrading treatment in breach of this provision. *Court's conclusions:* 1. For the time being the Russian legal system does not dispose of an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient

	redress in connection with a complaint about inadequate conditions of detention. 2. Ill-treatment that attains a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 of the Convention. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 of the Convention. Whereas the provision of four square metres remains the desirable standard of multi-occupancy accommodation, the Court has found that where the applicants have at their disposal less than three square metres of floor surface, the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3 of the Convention. In deciding whether or not there has been a violation of Article 3 of the Convention on account of the lack of personal space, the Court has to have regard to the following three elements: (a) each detainee must have an individual sleeping place in the cell; (b) each detainee must dispose of at least three square meters of floor space; and (c) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items. The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3 of the Convention. Even in cases where a larger prison cell was at issue – measuring in the range of three to four square meters per inmate – the Court found a violation of Article 3 of the Convention since the space factor was coupled with the established lack of ventilation and lighting. Special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. Restrictions on access to natural light and air owing to the fitting of metal shutters seriously aggravated the situation of prisoners in an already overcrowded cell and weighed heavily in favour of a violation of Article 3 of the Convention.
Harkins and Edwards v. United Kingdom Nos.: 9146/07 & 32650/07 Type: Judgment Date: 17 January 2012 Articles: N: 3 Keywords: – assurances	*Summary to be added.*

– extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: not available	
Othman (Abu Qatada) v. United Kingdom No.: 8139/09 Type: Judgment Date: 17 January 2012 Articles: Y: 6; N: 3, 5 Keywords: – assurances – asylum – expulsion – fair trial – ill-treatment Links: English only Translations: not available	*Summary to be added.*
Vinter and others v. United Kingdom Nos.: 66069/09 & 130/10 & 3896/10 Type: Judgment Date: 17 January 2012 Articles: N: 3 Keywords: – life sentence Links: English only Translations: not available	*Summary to be added.*
M. S. v. Belgium	*Circumstances:* Expulsion procedure initiated by Belgium against an Iraqi national, suspected of having links

No.: 50012/08 Type: Judgment Date: 31 January 2012 Articles: Y: 3, 5§1, 5§4 Keywords: – custody (judicial review) – custody (lawfulness) – expulsion – ill-treatment Links: French only Translations: not available	with terrorism, following his serving a sentence of imprisonment. After his release from prison, the applicant was detained from October 2007 to March 2009 in a closed transit centre for illegal aliens on the basis of an order to leave the territory. During his detention, he applied for refugee status which he was denied although the Aliens Appeals Board (AAB) noted that, if expelled to Iraq, the applicant ran the risk of being exposed to ill-treatment. Placed under a residence order between March 2009 and April 2010, the applicant was once again detained from April 2010 to October 2010 when he eventually was repatriated to Iraq. Prior to his repatriation, Belgian authorities had attempted to have the applicant removed to a third country. *Relevant complaints:* 1. The applicant claimed that he was returned to Iraq where he was exposed to ill-treatment. He argued that his return had not been voluntary and that the pressure under which he was placed by Belgian authorities was such that he the only possibility he could envisage was to return to Iraq. 2. Because his asylum application was still pending and because Belgian authorities knew that his expulsion to Iraq was not possible in light of the risk of ill-treatment he ran in that country, the applicant claimed that his first period of detention had been arbitrary as he could not be considered as an alien against whom action was being taken with a view to expulsion. 3. The applicant claimed his second period of detention was unlawful as it could not be considered that Belgian authorities were pursuing his expulsion with the diligence required by the Court. He further argued that he was given no information as to why he had once again been detained and was therefore deprived of the possibility to challenge its lawfulness. *Court's conclusions:* 1. To be valid, the waiving of certain procedural safeguards must be surrounded by sufficient guarantees in order to ensure that the renunciation was freely expressed. In the present case, the applicant was placed before one of the following choices: to stay in Belgium with no hope of obtaining the right to reside there legally and no perspective of living there in freedom, returning to Iraq with the risk of being arrested there and exposed to ill-treatment; or going to a third country which turned out to be unrealisable. The applicant cannot be considered as having validly waived his right to the protection guaranteed under Article 3 of the Convention and his return to Iraq must be considered to be a forced return. Even in the most difficult circumstances, such as the fight against terrorism, and whatever the acts of the person concerned may have been, the Convention prohibits torture in absolute terms. It is therefore not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion. In the present case, the existence of serious and established grounds for believing that there was a real risk of treatment contrary to Article 3 of the Convention is not disputed. Belgian authorities should have accompanied the applicant's return by a series

	of safeguards with a view to ensuring his security, among which the most important is seeking diplomatic assurances from the concerned State's authorities. By failing to take such action, Belgian authorities did not do all that could reasonably be expected from them with regard to the Convention. 2. An expulsion procedure cannot be considered as being underway when the authorities have no perspective of expelling the persons concerned during the time of their detention without exposing them to a real risk of ill-treatment. Detention on the sole ground of national security does not fit within the confines of Article 5§1(f) of the Convention. The Court considers that the applicant was detained according to a procedure prescribes by law and has no reason to doubt that national authorities were considering expulsion and had a realistic perspective to achieve expulsion in case the application for asylum was denied. The situation must be analysed differently from the date the General Commission for refugees and stateless people (CGRA) issued its opinion on the risks faced by the applicant if expelled to Iraq. From that moment on, the applicant was only held in custody for security reasons, since the authorities could not proceed with his expulsion without breaching their obligations with regard to the Convention. 3. The order to leave the territory on the basis of which the applicant was detained refers to the circumstance that the Aliens Office (OE) was awaiting an opinion from the CGRA regarding the persistence of the risks faced by the applicant if expelled to Iraq. If the Court is willing to see that step as a necessary precondition to the applicant's expulsion, it cannot conceive that such a step may in itself be considered as an action taken with a view to expulsion within the meaning of Article 5§1(f) of the Convention. The situation is different from the moment the Belgian authorities established diplomatic contacts to find a third State willing to welcome the applicant until the moment when the applicant refused to be removed to Burundi. In light of the failure of the steps taken with a view to finding a third State, the absence of any further steps in that connection and the new opinion from the CGRA confirming the risks faced by the applicant if returned to Iraq, the Court can only but note the absence of a connection between the detention of the applicant and the possibility of removing him from Belgian territory.
Al Husin v. Bosnia and Herzegovina No.: 3727/08 Type: Judgment Date: 7 February 2012 Articles: Y: 3, 5§1; N: 5§1 Keywords: – custody (lawfulness)	*Summary to be added.*

– expulsion – ill-treatment Links: English only Translations: not available	
Antwi and others v. Norway No.: 26940/10 Type: Judgment Date: 14 February 2012 Articles: N: 8 Keywords: – expulsion – family life (separation of family) Links: English only Translations: not available	*Summary to be added.*
Hirsi Jamaa and Others v. Italy No.: 27765/09 Type: Judgment Date: 23 February 2012 Articles: Y: 3, 4 (Prot. 4), 13 Keywords: – expulsion – ill-treatment Links: English, French Translations: not available	*Summary to be added.*
Samaras and Others v. Greece No.: 11463/09 Type: Judgment Date: 28 February 2012 Articles: Y: 3	*Circumstances:* Conditions of detention of twelve Greek nationals and one Somali national in the Greek prison of Ioannina. *Relevant complaint:* The applicants claimed that the conditions of detention did not meet the national and international standards and are therefore likely to cause them serious physical and psychological suffering. They claimed that they lived and slept in confined and overcrowded cells or dormitories with no tables or chairs or free room to move, that they spent 18 hours a day in dormitories where they had to stay on their beds

Keyword: – ill-treatment Links: French only Translations: not available	and that several of them did not receive treatment for the diseases they suffered from. *Court's conclusions:* Article 3 of the Convention imposes on the State the obligation to ensure that all prisoners are detained in conditions compatible with respect for their human dignity and that the method of execution of the measure does not subject them to distress or to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Recalling that serious prison overpopulation raises an issue under Article 3 of the Convention, the Court cannot however decide how much personal space must be allotted to each prisoner in terms of the Convention, as that issue may rely on many factors, such as the length of the deprivation of liberty, the possibility for outdoor exercise or the mental and physical condition of the prisoner. In cases where overcrowding alone was not such as to raise an issue under Article 3 of the Convention, other aspects of the conditions of detention must be taken into account such as the possibility to use the toilet privately, the ventilation system, the access natural light and air, the quality of heating and the respect for basic sanitary requirements. The Court does not intend to reconsider its jurisprudence according to which elements other than overcrowding or the personal space available for a prisoner may be taken into account when examining compliance with Article 3 requirements. The possibility to move outside of the dormitory is one of those elements. However, such a factor, taken alone, cannot be considered of such importance so as to tip the scales in favour of a finding of non-violation of Article 3 of the Convention. The Court must also weigh the form and the duration of the freedom of movement against the global duration of detention and the general conditions which prevail within the prison. The Court notes that the period of time during which the applicants worked only constituted a limited fraction of the total duration of their imprisonment.
Atmaca v. Germany No.: 45293/06 Type: Decision Date: 6 March 2012 Articles: – Keywords: – interim measure Links: English only Translations: not available	*Circumstances:* Extradition from Germany to Turkey for the purposes of prosecution of a person who has been active in the PKK (the Kurdistan Workers' Party) and sought asylum in Germany. Interim measure complied with. *Relevant complaint:* The applicant complained that he ran a risk of being tortured and being exposed to degrading prison conditions and that he would be convicted in an unfair trial if extradited to Turkey. *Court's conclusions:* The decision of the Federal Ministry of Justice whether or not to authorise the applicant's extradition to Turkey, which had initially been scheduled for 18 July 2007, has not been taken to date. The Court observes in this connection that the proceedings before the Federal Ministry of Justice for the authorisation of the applicant's extradition have already been pending for some four-and-a-half years without any decision having been taken. It further notes that these proceedings cannot be considered as a remedy "available" to the applicant to afford redress in respect of the breaches of the Convention alleged, for the purposes of the requirement of exhaustion of domestic remedies under Article 35§1 of the Convention. It is not

	within the applicant's power to institute these proceedings. The Government have accordingly not pleaded that the applicant failed to exhaust domestic remedies as a result of the fact that the proceedings before the Federal Ministry of Justice were still pending. Nevertheless, the Federal Ministry of Justice's decision on the authorisation of the applicant's extradition is a precondition for the domestic courts' decision that his extradition was permissible to become enforceable. The Court regrets in that context that the Ministry's decision on whether or not to authorise the applicant's extradition has apparently been adjourned by reference, *inter alia*, to the Court's decision to indicate to the German Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Turkey until further notice. The application of Rule 39 only aimed at suspending the *execution* of a decision by the domestic authorities to extradite the applicant. It did not prevent the Government from deciding at any moment whether or not the applicant should be extradited.
Mannai v. Italy No.: 9961/10 Type: Judgment Date: 27 March 2012 No.: 9961/10 Articles: Keywords: – expulsion – ill-treatment – interim measure Links: French only Translations: not available	*NOTE: As the case is practically identical to Ben Khemais case, it could be deleted from the list.* *Circumstances:* Expulsion of a Tunisian national from Italy, after serving a sentence for terrorist offences, to Tunisia. Interim measure not complied with. *Relevant complaints:* 1. The applicant claimed that following his expulsion from Italy he was held in custody by Tunisian authorities under inhuman conditions. His claim is confirmed by reports established by Amnesty International and the US Department of State which demonstrate that torture is used in Tunisia. 2. The applicant claimed that his expulsion hindered his right of individual petition. *Court's conclusions:* 1. The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. Serious and confirmed evidence justify the Court's finding that there is a real risk that the applicant will be subjected to treatment contrary to Article 3 of the Convention. 2. Where a risk of irreparable damage is plausibly asserted, the object of the interim measure is to maintain the status quo pending the Court's determination of the case. The Court notes that the applicant is currently free and has maintained contact with his attorney. The fact that the applicant has been able to pursue the proceedings does not preclude an issue from arising under Article 34 of the Convention: the rights enshrined in that Article have been hindered in that it is more difficult for the applicant to exercise his right of application as a result of the Government's actions. The fact that the applicant was removed from Italy's jurisdiction constitutes a serious obstacle liable to prevent the Government from discharging its obligations to protect the applicant's rights and to remedy the consequences of the violations found by the Court.
Babar Ahmad and Others	*NOTE: For the Decision, see above.*

v. United Kingdom (Judgment) Nos.: 24027/07, 11949/08, 36742/08, 66911/09 & 67354/09 Type: Judgment Date: 10 April 2012 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: not available	*Summary to be added.*
Balogun v. United Kingdom No.: 60286/09 Type: Judgment Date: 10 April 2012 Articles: N: 3, 8 Keywords: – expulsion – family life (separation of family) – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion from the United Kingdom to Nigeria of a person who lived in the United Kingdom since the age of 3, and following his conviction for a criminal offence in the United Kingdom. Interim measure complied with. *Relevant complaint:* The applicant's expulsion to Nigeria would breach Article 3 of the Convention because of his attempted suicide and the risk of suicide following dismissal of his application to revoke the expulsion. *Court's conclusions:* Aliens who are subject to expulsion cannot in principle claim any right to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by that State, unless such exceptional circumstances pertain as to render the implementation of a decision to remove an alien incompatible with Article 3 of the Convention. The Court emphasises the high threshold for Article 3 of the Convention, which applies with equal force in cases involving a risk of suicide as in other cases. In the light of the precautions to be taken by the Government and the existence of adequate psychiatric care in Nigeria, should the applicant require it, the Court is unable to find that the applicant's deportation would result in a real and imminent risk of treatment of such a severity as to reach this threshold.
Woolley v. United Kingdom No.: 28019/10 Type: Judgment	*Summary to be added.*

Date: 10 April 2012 Articles: N: 5§1 Keywords: – extradition (rule of speciality) – rule of speciality Links: English only Translations: not available	
Molotchko v. Ukraine No.: 12275/10 Type: Judgment Date: 26 April 2012 Articles: Y: 5§1(f), 5§4; N: 5§1(f) Keywords: – asylum – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – interim measure Links: English only Translations: not available	*Circumstances:* Extradition from Ukraine to Belarus, of a person who had obtained first asylum (in respect of Belarus) and then nationality in Germany, for the purposes of criminal prosecution. Application for asylum in Ukraine was refused. Interim measure complied with. *Relevant complaint:* While the applicant's detention in Ukraine before 17 June 2010 had not been based on sufficient legal grounds, the new regulations did not bring his detention after that date into compliance with the Convention requirements. In particular, he argued that the domestic court deciding on the lawfulness of his continued detention had applied the regulations formally and had omitted to deal with the applicant's substantial objections to his extradition. The courts also failed to consider his submissions that he might not be prosecuted on charges of abuse of office, as he had never held any office in Belarus. In this connection, the applicant generally stated that allegations of unlawfulness or arbitrariness of restraint measures chosen by the authorities of the requesting State in the context of criminal proceedings and allegations of unsoundness of criminal charges fell outside the scope of the review by the Ukrainian courts. Furthermore, the courts did not take into consideration the possibility of releasing him from detention under certain conditions, in spite of the lengthy period of his detention. Under the new regulations there was no obligation to inform the person whose liberty was at question, or his lawyer, of a court hearing on the matter, while under the Code of Criminal Procedure a notice of hearing should be given to the prosecutors. The new regulations did not provide for the participation of the persons concerned in the examination of extradition requests by the GPU; such persons were not given sufficient time to prepare and submit appeals against extradition decisions; the regulations did not require the courts to inform the persons of the scheduled hearing concerning their appeals; criteria according to which courts have to assess the lawfulness of extradition decisions were not specified; the courts were not required to verify the accuracy of the prosecutors' findings or to consider the danger for the persons concerned to be subjected to torture or inhuman treatment in the receiving State or the risk of flagrant denial of justice in case of extradition; such danger might only be relied on as a ground for refusing extradition if the person concerned was granted refugee status. Under the new regulations ongoing court proceedings on appeals

	against extradition decisions did not impede their actual execution. *Court's conclusions:* The law implementing the new regulations contained no transitional arrangements concerning, in particular, their application in respect of persons already in detention on the date of the regulations' entry into force. Thus, it is unclear whether the applicant would have been able to initiate the review procedure provided for in Article 463(9) of the Code of Criminal Procedure before a decision to apply extradition arrest was taken in his case. In the circumstances, where the new regulations could have created some uncertainty as to their application in the applicant's situation, the authorities bore the obligation to ensure, without delay and through the relevant judicial procedure of review, that the applicant's continued detention was in compliance with the new regulations. No such review took place for six days after the new regulations entered into force, and no justification was given for the delay. By 23 June 2010 the GPU had collected the applicant's identity, nationality and occupation data. They had been provided with information concerning the criminal proceedings against the applicant in Belarus and his activities in that country. The GPU had also obtained advice from the SBU and the MFA on the applicant's allegations of political persecution in that country. There is nothing to suggest that the above information was insufficient for taking a decision on the request for the applicant's extradition. The Court may agree that with the entry into force of the new regulations on extradition on 17 June 2010 additional time was necessary in order to ensure that the inquiry complied with the new requirements. However, the Court notes that the authorities did not provide reasons for keeping the inquiry ongoing for the next twelve months, in spite of the general one-month time-limit set by the new regulations. The material available to the Court does not demonstrate that between 29 July 2010 and 19 May 2011 the relevant proceedings were being actively and diligently pursued with a view to determining whether it would be lawful to proceed with the applicant's extradition. The Court further notes that it was not suggested by the parties that the authorities had to delay a decision on the applicant's extradition pending the outcome of the proceedings on the applicant's request for refugee status. The interim measure which the Court indicated in the present case did not constitute a legal impediment to a decision on extradition to Belarus as such, as the measure was aimed at preventing the implementation of such a decision and did not set any limits, either in substance or procedurally, on the authorities' decision-making. In this latter context, the Court finds it necessary to reiterate that an interim measure, indicated under Rule 39, preventing a person's extradition does not require or form a basis for the person's detention pending a decision on his or her extradition. As regards the applicant's argument concerning the limitations on his participation in the review, the Court observes that throughout the proceedings the applicant, assisted by lawyers, had the opportunity to comment on the prosecutor's requests for his continued detention and to convey and defend his arguments before the courts at the ordinary and appeal levels of jurisdiction. The applicant did not refer to any

	court hearing concerning his detention of which he or his lawyers had not been duly notified. He was present at all hearings before the first-instance court. Given the particular circumstances of the case, the fact that the applicant was not allowed to take part in the appeal hearings did not upset the "equality of arms" between the parties or otherwise render the proceedings unfair. The appeal hearings were attended by the applicant's lawyers and the applicant did not suggest that he had had additional arguments which could not have been raised by his lawyers at those hearings. The Court is not of the view that the national courts deciding on the applicant's detention were required to carry out a separate inquiry into the applicant's objections against his extradition. The Court considers that the courts should not have omitted to examine whether the length of the applicant's detention exceeded what was reasonably required for the completion of the inquiry.
Labsi v. Slovakia No.: 33809/08 Type: Judgment Date: 15 May 2012 Articles: Y: 3, 13, 34 Keywords: – assurances – asylum – expulsion – family life (separation of family) – ill-treatment – in absentia – interim measure Links: English only Translations: not available	*Circumstances:* Expulsion from Slovakia to Algeria (following denial of extradition) of a person who had been convicted and sentenced in Algeria in absentia for belonging to a terrorist organization. Interim measure not complied with. *Relevant complaint:* The applicant complained that by expelling him to Algeria the respondent State had breached Article 3 of the Convention. *Court's conclusions:* The assurances given by the Algerian authorities concerning fair trial and protection from ill-treatment were of a general nature, and they have to be considered in the light of the information which was available at the time of the applicant's expulsion as to the human rights situation in his country of origin. In that respect it is firstly relevant that the Supreme Court found that the applicant's extradition to Algeria was not permissible. With reference to the Court's case-law and a number of international documents it concluded that there were justified reasons to fear that the applicant would be exposed to treatment contrary to Article 3 of the Convention in Algeria. Secondly, a real risk of the applicant being exposed to ill-treatment in his country of origin was also acknowledged in the asylum proceedings. Thirdly, as regards the receiving State's practices, it is particularly relevant that a number of international documents highlighted a real risk of ill-treatment to which individuals suspected of terrorist activities were exposed while in the hands of the DRS. That authority was reported to have detained people incommunicado and beyond the control of judicial authorities for a period from twelve days up to more than one year. Specific cases of torture or other forms of ill-treatment were reported to have occurred during such detention.
S. F. and others v. Sweden No.: 52077/10 Type: Judgment Date: 15 May 2012 Articles: Y: 3	*Circumstances:* Expulsion from Sweden to Iran. Interim measure complied with. *Relevant complaint:* The applicants complained that, if deported to Iran, they would be subjected to torture or inhuman and degrading treatment or punishment, in violation of Article 3 of the Convention. *Court's conclusions:* Whilst being aware of the reports of serious human rights violations in Iran, the Court does not find them to be of such a nature as to show, on their own, that there would be a violation of the

Keywords: – expulsion – ill-treatment Links: English only Translations: not available	Convention if an applicant were returned to that country. The Court has to establish whether the applicants' personal situation is such that their return to Iran would contravene Article 3 of the Convention. To determine whether these activities would expose the applicants to persecution or serious harm if returned to Iran, the Court has regard to the relevant country information on Iran, as set out above. The information confirms that Iranian authorities effectively monitor internet communications and regime critics both within and outside of Iran. It is noted that a specific intelligence "Cyber Unit" targets regime critics on the internet. Further, according to the information available to the Court, Iranians returning to Iran are screened on arrival. There are a number of factors which indicate that the resources available could be used to identify the applicants and, in this regard, the Court also considers that the applicants' activities and alleged incidents in Iran are of relevance. The first applicant's arrest in 2003 as well as his background as a musician and prominent Iranian athlete also increase the risk of his being identified. Additionally, the applicants allegedly left Iran illegally and do not have valid exit documentation. Having considered the applicants' *sur place* activities and the identification risk on return, the Court also notes additional factors possibly triggering an inquiry by the Iranian authorities on return as the applicants belong to several risk categories. They are of Kurdish and Persian origin, culturally active and well-educated.
Shakurov v. Russia No.: 55822/10 Type: Judgment Date: 5 June 2012 Articles: Y: 5§4; N: 3, 5§1, 8 Keywords: – assurances – asylum – custody (lawfulness) – custody (length) – extradition (custody) – extradition (grounds for refusal) – family life (separation of family) – ill-treatment Links: English only	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for a military offence. Interim measure complied with. *Relevant complaints:* 1. If extradited the applicant would be ill-treated in Uzbekistan, in breach of Article 3 of the Convention. The diplomatic assurances of the requesting State were insufficient to discard the risk of ill-treatment. There was no control mechanism at the domestic level which would allow tracking the authorities' compliance with the assurances and holding them liable in case of a breach. The information sent by the Prosecutor General's Office to their Uzbek counterpart following the extradition request, such as the applicant's intention to apply for asylum in Russia and his criticism of the human rights situation in Uzbekistan, made him particularly vulnerable to a risk of political persecution. Assurances from the Uzbek authorities could not offer a reliable guarantee against the risk of ill-treatment, given that the practice of torture there was described by reputable international sources as being systematic. Given a number of international reports on the general human rights situation in Uzbekistan, the existence of domestic laws and accession to international treaties by the requesting State were not sufficient to offer him adequate protection against the risk of ill-treatment. 2. The term of detention pending extradition had started running on 29 October 2009 when the court had first ordered his detention. Since the statutory twelve-month period of detention under Article 109 of the CCrP

Translations: not available	had thus expired on 29 October 2010, there had been no legal basis for his subsequent detention from 29 October 2010 to 11 January 2011. The legal provisions governing detention pending extradition did not provide him with an opportunity to estimate the maximum statutory period of detention. As a result, the domestic courts had construed and applied them in an arbitrary manner. The domestic authorities had not displayed due diligence in conducting the extradition proceedings, in particular from 3 February to 24 June 2010, when the said proceedings remained dormant. The domestic courts had failed to take into account the progress of the extradition proceedings.¨ 3. The lawfulness of the applicant's detention had not been decided speedily. 4. Execution of the extradition order would entail "significant and irreparable" consequences to the applicant's relationship with his wife and children, especially his daughter who required health care in Russia. His extradition would not pursue any of the aims set out in Article 8§2 of the Convention, the Government's reference to their other international obligations being insufficient to outweigh their obligations under Article 8 of the Convention. *Court's conclusions:* 1. The applicant only broadly referred to the risk of being subjected to ill-treatment. He argued, *inter alia*, that human rights violations, including torture, were common in Uzbekistan and that he risked workplace discrimination and political persecution in Uzbekistan because he had not mastered the Uzbek language and generally disapproved of the politics of Uzbekistan. However, neither he nor his family had been politically or religiously active or persecuted. The applicant submitted that his wife had been threatened by the Uzbek police prior to her departure from the country but failed to provide additional detail in this regard. He had not relied on any personal experience of ill-treatment at the hands of the Uzbek law-enforcement authorities or relevant reports by international organisations and UN agencies. The domestic authorities, including the courts at two levels of jurisdiction, gave proper consideration to the applicant's arguments and dismissed them as unsubstantiated. No evidence has been adduced before the Court to confirm that Russian-speaking criminal suspects of non-Uzbek ethnic origin are treated differently from ethnic Uzbek criminal suspects. The applicant's allegations that any criminal suspect in Uzbekistan runs a risk of ill-treatment are unconvincing. Furthermore, the materials at the Court's disposal do not indicate that the applicant belongs to any proscribed religious movement or any vulnerable group susceptible of being ill-treated in the requesting country; or that he or members of his family were previously persecuted or ill-treated in Uzbekistan. Importantly, in the course of the extradition proceedings, the applicant mostly challenged the charges brought against him in Uzbekistan and referred to the overall poor economic and human rights situation there. He stated that he had left Uzbekistan with a view to ensuring his family's

	well-being, in particular their economic well-being. The applicant did not submit asylum or refugee applications until January 2010, that is right after his detention with a view to extradition and over seven years after his arrival in Russia. 2. The district court specified the time-limits in the detention orders, relying on Article 109 of the CCrP and the Minsk Convention. Both the district and the regional courts assessed the lawfulness and various circumstances, which were considered to be relevant to the applicant's detention, including the progress of the extradition proceedings and his refugee or asylum applications. The implementation of an interim measure following an indication by the Court to a State Party that it would be desirable, until further notice, not to return an individual to a particular country does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5§1 of the Convention. In other words, the domestic authorities must still act in strict compliance with domestic law. The extradition proceedings, although suspended for over three months pursuant to the request made by the Court, have nevertheless been in progress and in compliance with the domestic law. 3. It appears that the major part of the delays – some ten and thirty days – related to the period of time when the case file was being transferred from the first-instance court to the appeal court. Apparently, the domestic legislation did not set out any relevant time-limit for this purpose. It therefore follows that the entire length of the appeal proceedings is attributable to the domestic authorities. It does not appear that any complex issues were involved in the determination of the lawfulness of the applicant's detention by the second-instance court. Neither was it argued that proper review of detention had required, for instance, the collection of additional observations and documents pertaining to the applicant's personal circumstances such as his medical condition. The Court considers that it is incumbent on the respondent State to organise its legal system in such a way which allows for speedy examination of detention-related issues. 4. Mindful of the importance of extradition arrangements between States in the fight against crime, the Court had held that it would only be in exceptional circumstances that an applicant's private or family life in a Contracting State would outweigh the legitimate aim pursued by his or her extradition. It has not been substantiated that the applicant would have any significant difficulty in maintaining his family life after execution of the extradition order. It is unclear how and whether the extradition would particularly affect their relationship with the applicant. As regards medical care provided to the applicant's daughter (who was sixteen at the time and has reached the age of majority now), the reviewing courts took this aspect into consideration, in so far as it was articulated by the applicant. It appears that the treatment could well be pursued without the applicant. It has not been convincingly shown that the best interests and well-being of the children should have weighed heavily, alone or in combination with other factors, against the

	extradition. The present case does not disclose any "exceptional circumstances", and it has not been substantiated that execution of the extradition order would entail exceptionally grave consequences for the applicant's family life. With due regard to the gravity of the charges against the applicant and the legitimate interest Russia has in honouring its extradition obligations, the Court is satisfied that the extradition decision in respect of the applicant was proportionate to the legitimate aim pursued.
Kozhayev v. Russia No.: 60045/10 Type: Judgment Date: 5 June 2012 Articles: Y: 5§1, N: 3, 5§1 Keywords: – assurances – custody (lawfulness) – custody (length) – death penalty – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Belarus for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. If extradited to Belarus, the applicant risked being sentenced to the death penalty; he would be ill-treated in Belarusian detention facilities, in particular, with a view to extracting a confession from him in relation to the criminal offences he was accused of; and that he would have to suffer from appalling conditions of detention in such facilities. The applicant also alleged that the above matters, in particular concerning the risk of ill-treatment, had not been properly examined by the Russian authorities. 2. The detention order of 25 November 2009 had not set a limit on the duration of the applicant's detention and that there had been no extension orders. Subsequent detention orders had authorised his detention for long periods of time. The circumstances relating to his detention could have changed with the passage of time, while the detention orders had remained based on the gravity of the charges against him and the existence of pending extradition proceedings. In any event, the applicable procedures and legislation had been insufficiently clear and precise. *Court's conclusions:* 1. Besides making reference to various international reports concerning the general human-rights situation in Belarus, the applicant has not substantiated an individualised risk of ill-treatment on account of his alleged religious beliefs. He did not provide convincing arguments and evidence relating to any alleged persecution of Hare Krishna followers in Belarus. While it is common ground between the parties that in the event of his extradition the applicant will be kept in detention in Belarus pending trial, his reference to a general problem concerning human rights observance in the requesting country cannot alone serve as a sufficient basis to bar extradition. It is true that the Court previously considered that extradition or deportation to a specific country on charges relating to politically and/or religiously motivated criminal offences could, depending on the context, raise serious issues under Article 3 of the Convention. At the same time, no such special context was present when an applicant was charged with an ordinary criminal offence. The applicant in the present case was charged with an ordinary criminal offence without any particular, for instance political, context. The applicant in the present case does not claim to belong to the political

	opposition. The applicant's reliance on various reports based on the assessment of the political context in relation to the elections in Belarus is therefore not persuasive. The applicant did not allege that his previous experience of criminal prosecution in Belarus had involved any circumstances that substantiated a serious risk of ill-treatment or unfair trial in the future. The applicant's allegation that any detained criminal suspect in Belarus runs a risk of ill-treatment is too general. Having examined the available material and the parties' submissions, the Court considers that it has not been substantiated that the human rights situation in Belarus is such as to call for a total ban on extradition to that country, for instance on account of a risk of ill-treatment of detainees. There is no evidence that members of the applicant's family were previously persecuted or ill-treated in Belarus. No inferences, beyond mere speculation, should be made in the present case from the alleged delay in bringing proceedings against the applicant in relation to the attempted murder in 1998. The death penalty was, at the time, and remains enumerated in Article 139§2 among the possible sentences for certain offences; however, the Court should not speculate on the possible outcome of the applicant's criminal case in Belarus. Even assuming that the accusation against the applicant can be reclassified, there is no evidence that an attempted/inchoate nature of the offence in question, which is not disputed, entails the death penalty, or that persons convicted of such offences are liable in practice to be sentenced to death. In fact, it is clear from Article 67 of the Belarusian Criminal Code that the death penalty should not be imposed for attempted offences. 2. The period of the applicant's detention under the court order of 18 January 2010 expired on 23 May 2010. A new detention order was issued on 24 May 2010. For detention to meet the standard of "lawfulness", it must have a basis in domestic law. It does not appear that, under Russian law, a detainee could continue to be held in detention once an authorised detention period had expired, or that any exceptions to that rule were permitted or provided for, no matter how short the duration of the detention. Thus, the period of the applicant's detention between the expiry of the previous detention order at midnight on 23 May 2010 until the time when a new one was issued on 24 May 2010 was "unlawful".
Soliyev v. Russia No.: 62400/10 Type: Judgment Date: 5 June 2012 Articles: N: 5§4 Keywords: – asylum – custody (lawfulness)	*Circumstances:* Extradition from Russia to Uzbekistan of an asylum seeker for prosecution for attempting to overthrow the constitutional order, belonging to a religious group and dissemination of subversive materials. Interim measure complied with. Extradition refused for risk of ill-treatment. *Relevant complaint:* The applicant's detention from 28 to 30 September 2010 had been unlawful. There had been no effective procedure by which he could have challenged his detention. He and his lawyers had not been afforded an opportunity to be present at the appeal hearing *Court's conclusions:* Even accepting that the prosecutor's extension request was submitted to the district court in breach of the seven-day period, the Court considers that this procedural irregularity was not such as to entail

– custody (length) – extradition (custody) Links: English only Translations: not available	a breach of Article 5§1 of the Convention. The proceedings by which the applicant's detention was ordered and extended amounted to a form of periodic review of a judicial character. It is not in dispute that the first-instance court was enabled to assess the conditions which, according to Article 5§1(f) of the Convention, are essential for "lawful" detention with a view to extradition. In addition, while Article 5§4 of the Convention does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. Although regrettable, the fact that the applicant and his lawyer were not informed of the appeal hearing did not entail, in the circumstances of the case, a breach of Article 5§4 of the Convention. The Court notes in that connection that the applicant and his lawyer were present at the detention hearing before the first-instance court. There is no indication that this hearing was unfair. The appeal court examined the issue of the applicant's detention on the basis of written submissions and upheld the detention order issued by the lower court. It does not appear that the prosecutor made any additional oral argument or adduced new evidence.
Khodzhamberdiyev v. Russia No.: 64809/10 Type: Judgment Date: 5 June 2012 Articles: N: 5§1, 5§4 Keywords: – asylum – custody (lawfulness) – custody (length) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for attempting to overthrow the existing regime, setting up a criminal group, producing and disseminating documents containing a threat to national security and public order, and setting up, managing and participating in extremist, separatist, fundamentalist and other banned organisations. Extradition refused because the person sought applied for asylum. The application for asylum has been, in the end, also refused by Russian authorities but the UNHCR later recognised the applicant as eligible for refugee status. Interim measure complied with. *Relevant complaint:* The applicant argued that his detention with a view to extradition had been in breach of the requirement of lawfulness under Article 5§1(f) of the Convention. The applicant also alleged that the authorities failed to display diligence in the conduct of the extradition proceedings between 22 June and 9 August 2010. He had no effective procedure by which he could challenge his detention *Court's conclusions:* It appears that the extradition proceedings were "in progress" all this time, including between June and August 2010. On 28 December 2010 the regional court examined the extradition case and annulled the extradition order of 9 August 2010, also ordering the applicant's release from detention. Before the expiry of the time-limit, the detention was subsequently subject to extension requests from a prosecutor's office, and was extended on several occasions, including on 1 April and 23 August 2010, also for specific periods of time.
Bajsultanov v. Austria No.: 54131/10 Type: Judgment Date: 12 June 2012	*Circumstances:* Expulsion from Austria to Russia of a Chechen who had been granted asylum status in Austria that has been subsequently lifted. Interim measure complied with. *Relevant complaints:* 1. The country reports consulted had shown that there were still grave human rights violations in Chechnya

Articles: N: 3, 8 Keywords: – asylum – expulsion – family life (separation of family) – ill-treatment Links: English only Translations: not available	and that the security services very often resorted to violence and abuse. Rebels, or people considered rebels or friends of rebels, were at risk of being detained, of disappearing and/or of being tortured. However, the Austrian authorities had not drawn the right conclusions on the basis of those reports and the original reasons for the applicant's flight when they allowed his asylum status to be lifted. 2. The applicant's wife and the two children had independent asylum status in Austria. In those asylum decisions, the Independent Asylum Panel explicitly stated that the applicant's wife had a well-founded fear of independent persecution if she returned to the Russian Federation. It followed that the applicant's wife and children could not reasonably be expected to follow the applicant to the Russian Federation to maintain family life; in fact, an expulsion of the applicant to the Russian Federation would render any effective family relations impossible. *Court's conclusions:* 1. The applicant had acted in a supporting role during the first war, which ended in 1996. He had not taken any part in the second war in Chechnya. The Court thus finds that considerable time has passed since the first Chechen war. In this context, the Court refers to the report of the Danish Immigration Service's fact-finding mission, which stated that even active participants in the first war were not at risk of being persecuted by the present Chechen authorities. His family, namely his parents and six siblings, continued to live in Chechnya after the applicant had left and had not reported, according to the applicant's own statement, any harassment or abusive behaviour by local or federal security forces in the region. The applicant had kept in regular telephone contact with his father; it is therefore likely that he would have known of any punitive actions against his relatives in Chechnya. In view of the repeatedly reported practice of abuse of relatives of alleged rebels or supporters and sympathisers, it therefore seems that the applicant is not considered to belong to either of these groups. Overall, it seems that in spite of certain improvements, the general security situation in Chechnya cannot be considered safe. However, the applicant's individual situation does not show substantial grounds for believing that he would be at a real risk of ill-treatment within the meaning of Article 3 of the Convention if he returned to the Russian Federation. 2. The applicant's wife and the children are recognised refugees in Austria, with asylum status which has been awarded to them in separate decisions. However, at the time the applicant's wife was considered to be at risk of persecution in Chechnya due to her husband being at risk. The applicant's wife herself never claimed a risk of ill-treatment because of her own conduct or her own role in any of the armed conflicts. Consequently, in view of the Court's finding with regard to the applicant's complaint under Article 3 of the Convention above, the applicant's wife can also not be considered as being at a real risk of being subjected

	to treatment contrary to Article 3 of the Convention if she returned to Chechnya.
Rustamov v. Russia No.: 11209/10 Type: Judgment Date: 3 July 2012 Articles: Y: 3; N: 5§1, 5§4, 34 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – extradition (grounds of refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Uzbekistan for prosecution for suspicion of attempting to overthrow Uzbek constitutional order of person granted refugee status by the UNHCR and seeking asylum in Russia (decision pending). Interim measure complied with. *Relevant complaints:* 1. If extradited, the applicant would be ill-treated in Uzbekistan in breach of Article 3 of the Convention. At the very beginning of the proceedings against him, the Uzbek authorities had been already regarding him as a criminal, in violation of the presumption of innocence. 2. The applicant's detention with a view to extradition had been in breach of the requirement of lawfulness under Article 5 of the Convention. 3. The authorities had not displayed sufficient diligence in the conduct of the extradition proceedings. *Court's conclusions:* 1. Requesting an applicant to produce "indisputable" evidence of a risk of ill-treatment in the requesting country would be tantamount to asking him to prove the existence of a future event, which is impossible, and would place a clearly disproportionate burden on him. What should be assessed in this type of case are the foreseeable consequences of sending the applicant to the receiving country. The domestic courts' analysis of the human rights situation in Uzbekistan was confined to a reference to the results of checks by various domestic authorities, without any additional details. In the absence of further details on this point the Court considers that a brief reference to the above results of inquiries cannot be accepted as sufficient for the purpose of the analysis of the human rights situation in the host country. 2. In so far as the applicant may be understood to argue that he had remained in detention on the basis of fabricated charges, it is immaterial, for the purposes of Article 5§1(f) of the Convention, whether the underlying decision to expel or to extradite can be justified under national law or the Convention. 3. Since 7 July 2011, proceedings concerning the applicant's request for temporary asylum have been pending before the domestic authorities. In these circumstances, the Court is satisfied that actions were taken by the authorities in the proceedings which could have had a bearing on the extradition issue, and the authorities and courts before which the case came gave their decisions within reasonable time.
Samsonnikov v. Estonia No.: 52178/10 Type: Judgment Date: 3 July 2012 Articles: N: 8	*Circumstances:* Expulsion from Estonia to Russia of HIV-positive person, previously deported from Sweden to Estonia, who had been born and raised in Estonia and had no ties in Russia. *Relevant complaint:* The applicant had spent his whole life in Estonia and being a second-generation immigrant had no ties whatsoever with any other country. Therefore, he deserved increased protection under the Convention.

Keywords: – expulsion – family life (separation of family) Links: English only Translations: not available	*Court's conclusions:* Although the applicant argued that he had close family ties with his father, who lived in Estonia, and that they were dependent upon one another owing to his illness and his father's advanced age, the Court is not convinced that these relations extended beyond usual ties between grown-up family members.

C. List of case law relevant for the application of the European Convention on Mutual Assistance in Criminal Matters (CETS 030) and its Additional Protocols (CETS 099 and 182)

Case Data	*Summary*
A. M. v. Italy No.: 37019/97 Type: Judgment Date: 14 December 1999 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English, French Translations: not available	*Circumstances:* Mutual legal assistance (hearing of witnesses) obtained by Italy from the United States of America. *Relevant complaints:* 1. Statements made outside Italian territory cannot be read out in trial in Italy. The acts performed pursuant to the rogatory letters were invalid and maintained that the fact that they had been read out at the applicant's trial had denied him any opportunity to examine his accusers. 2. As to the possibility of seeking examination of the witnesses under the Mutual Assistance Treaty, the rogatory letters had been issued without the applicant's knowledge and, as a result, he had been unable to exercise the rights and liberties afforded by Article 14 of that Treaty. *Court's conclusions:* 1. The rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 of the Convention if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial. In convicting the applicant in the instant case the domestic courts relied solely on the statements made in the United States before trial and that the applicant was at no stage in the proceedings confronted with his accusers. 2. It should be noted that in his international rogatory letters of 16 March 1991, the Florence public prosecutor informed the American authorities that no lawyer was to be allowed to attend the requested examinations. In addition, the Government have not produced any court decision showing how the Treaty is applied. Accordingly, it has not been established that the procedure offered the accessibility and effectiveness required by Article 14 of the Mutual Assistance Treaty. Under these circumstances, the applicant cannot be regarded as having had a proper and adequate opportunity to challenge the witness statements that formed the basis of his conviction.
Solakov v. FYROM No.: 47023/99 Type: Judgment Date: 31 October 2001 Articles: N: 6§1, 6§3(d)	*Circumstances:* Mutual legal assistance (hearing of witnesses) obtained by FYROM from the United States of America. *Relevant complaint:* Trial in FYROM was unfair, as the applicant had been unable to cross-examine the witnesses whose statements served as the only basis for his conviction and that he had been unable to obtain the attendance and examination of two witnesses for the defence.

Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English, French Translations: not available	*Court's conclusions:* All the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. This does not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in court: to use as evidence such statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs 3(d) and 1 of Article 6 of the Convention, provided the rights of the defence have been respected. As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage. There is no indication that the applicant or his second lawyer expressed any intention to attend the cross-examination of the witnesses in the United States. In particular, the applicant declared before the investigating judge that he had left the decision whether or not to go to the United States to his second lawyer and that he had sufficient means to cover the travel expenses. The applicant's second lawyer never filed an application for a visa with the United States embassy and never requested the postponement of the hearing of the witnesses in case he thought he did not have sufficient time to obtain it. Moreover, the applicant's first lawyer never renewed his application for a visa. The present case can be distinguished from A.M. v. Italy where the witnesses were questioned by a police officer before trial and the applicant's lawyer was not allowed to attend their examination.
Somogyi v. Italy No.: 67972/01 Type: Judgment Date: 18 May 2004 Articles: Y: 6 Keywords: – fair trial – in absentia – mutual assistance (service of documents) Links: English, French Translations: not available	*Circumstances:* In absentia judgement issued in Italy after serving summons on the applicant in Hungary by post and his failure to appear at trial. *Relevant complaints:* 1. The applicant had been convicted in his absence without having the opportunity to defend himself before the Italian courts. He had not received any information about the opening of proceedings against him, since the notice of the date of the preliminary hearing had never been served on him and the signature on the reply slip acknowledging receipt of the letter from the Rimini preliminary investigations judge was not his. as there was a reasonable doubt about the authenticity of the signature on the reply slip acknowledging receipt of the letter from the Rimini preliminary investigations judge, the Italian courts should have ordered a report from a handwriting expert in order to be able to verify whether the defendant had been informed of the charges. 2. Service of the notice concerned had not been effected in accordance with the procedure provided for in the Italo-Hungarian agreement of 1977, which was mandatory for all notifications between the signatory States; it should therefore be considered null and void. *Court's conclusions:* 1. It could not be considered that the applicant's allegations concerning the authenticity of the signature were prima facie without foundation, particularly in view of the difference between the signatures he produced and the one on the return slip acknowledging receipt and the difference between the applicant's forename (Tamas)

	and that of the person who signed the slip (Thamas). In addition, the mistakes in the address were such as to raise serious doubts about the place to which the letter had been delivered. Article 6 of the Convention imposes on every national court an obligation to check whether the defendant has had the opportunity to apprise himself of the proceedings against him where, as in the instant case, this is disputed on a ground that does not immediately appear to be manifestly devoid of merit. In the instant case the means employed by the national authorities did not achieve the result required by Article 6 of the Convention. As regards the Government's assertion that the applicant had in any event learned of the proceedings through a journalist who had interviewed him or from the local press, the Court points out that to inform someone of a prosecution brought against him is a legal act of such importance that it must be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights, as is moreover clear from Article 6§3(a) of the Convention; vague and informal knowledge cannot suffice. 2. The Court does not consider it necessary to examine the questions concerned with application of the Italo-Hungarian agreement of 1977 or the European Convention on Mutual Assistance in Criminal Matters. It observes that it is competent to apply only the European Convention on Human Rights, and that it is not its task to interpret or review compliance with other international conventions as such. Moreover, it is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention.
Marcello Viola v. Italy No.: 45106/04 Type: Judgment Date: 5 October 2006 Articles: N: 6 Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (videoconference) Links: English, French Translations: not available	*Circumstances:* Hearing by videoconference in a domestic trial (no mutual legal assistance in fact involved). *Relevant complaint:* The applicant had been forced to participate by videoconference in the appeal hearings. *Court's conclusions:* Although the defendant's participation in the proceedings by videoconference is not as such contrary to the Convention, it is incumbent on the Court to ensure that recourse to this measure in any given case serves a legitimate aim and that the arrangements for the giving of evidence are compatible with the requirements of respect for due process, as laid down in Article 6 of the Convention. The applicant's participation in the appeal hearings by videoconference pursued legitimate aims under the Convention, namely, prevention of disorder, prevention of crime, protection of witnesses and victims of offences in respect of their rights to life, freedom and security, and compliance with the "reasonable time" requirement in judicial proceedings.
Van Ingen v. Belgium No.: 9987/03	*Circumstances:* Mutual legal assistance obtained (hearings, selected copies from an investigation file) by Belgium from the United States.

Type: Judgment Date: 13 May 2008 Articles: N: 6§1 Keywords: – fair trial – mutual assistance (admissibility of evidence) Links: French only Translations: not available	*Relevant complaints:* The applicant claimed that the Court that sentenced him in 2002 had denied the prosecutor's request to have the court proceedings reopened in order to submit new documents issued by US authorities and argued that the Court had reached that decision without having had the opportunity to examine those documents. He claimed that, in the context of a fair trial, it is impossible for a court to judge the well-foundedness of a request to reopen proceedings if it hasn't examined the available documents. *Court's conclusions:* Although the applicant is not required to establish that his defence suffered as a result of the Court of appeals' refusal to reopen the proceedings to allow the prosecutor to adduce new evidence, he must however establish the relevance of this evidence in the context of the criminal charge brought against him. Assuming that some of the evidence might not have been identical to the evidence that was in the Belgian file and that it was only disclosed after it was sent by the Government to the Court in September 2007, the applicant only acquired knowledge of that evidence on that date. It is obvious that the applicant could not, under such circumstances, establish before Belgian courts that the examination of that evidence could prove relevant for his defence. He could however have established that before the Court. Yet, the applicant does not indicate how the new evidence would have assisted in changing the verdict issued against him by Belgian courts if it had been adduced in the proceedings before them.
Rantsev v. Cyprus and Russia No.: 25965/04 Type: Judgment Date: 7 January 2010 Articles: Y: 2, 4, 5§1 Keywords: – custody (lawfulness) – mutual assistance – obligation to prosecute Links: English, French Translations: not available	*Circumstances:* Mutual assistance requested by Russia from Cyprus. *Relevant complaint:* The Russian authorities should have applied to the Cypriot authorities under the Legal Assistance Treaty to initiate criminal proceedings, as the applicant had requested. Instead, the Russian authorities merely sought information concerning the circumstances of Ms. Rantseva's death. His repeated requests that Russian authorities take statements from two Russian nationals resident in Russia were refused as the Russian authorities considered that they were unable to take the action requested without a legal assistance request from the Cypriot authorities. *Court's conclusions:* Ms. Rantseva's death took place in Cyprus. Article 2 of the Convention does not require member States' criminal laws to provide for universal jurisdiction in cases involving the death of one of their nationals. Accordingly, unless it can be shown that there are special features in the present case which require a departure from the general approach, the obligation to ensure an effective official investigation applies to Cyprus alone. For an investigation into a death to be effective, member States must take such steps as are necessary and available in order to secure relevant evidence, whether or not it is located in the territory of the investigating State. The Court observes that both Cyprus and Russia are parties to the Mutual Assistance Convention and have, in addition, concluded the bilateral Legal Assistance Treaty. These instruments set out a clear procedure by which the Cypriot authorities could have sought assistance from Russia in investigating the circumstances of Ms. Rantseva's stay in Cyprus and her subsequent death. In the absence of a legal assistance request, the Russian

	authorities were not required under Article 2 of the Convention to secure the evidence themselves.
Zhukovskiy v. Ukraine No.: 31240/03 Type: Judgment Date: 3 March 2011 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English only Translations: not available	*Circumstances:* Mutual assistance requested by Ukraine from Russia. *Relevant complaint:* The prosecutor had been present during the questioning of the witnesses in Russia, while the applicant's representative had not been. *Court's conclusions:* The domestic authorities examined different ways of obtaining the statements and opted for the questioning of the witnesses in Russia through the international legal assistance mechanism. Such a solution, to which the defence did not object, could be found reasonable. However, in the circumstances of the case it led to the situation in which the applicant found himself convicted of a very serious crime mainly on the basis of evidence given by witnesses none of whom were present during his trial in Ukraine. The domestic courts did not hear the direct evidence of these witnesses and the applicant had no opportunity to cross-examine them. Being aware of difficulties in securing the right of the applicant to examine the witnesses in the present case, the Court considers that the available modern technologies could offer more interactive type of questioning of witnesses abroad, like a video link. The domestic authorities on their part had at least to ensure that they were informed in advance about the date and place of hearing and about questions formulated by the domestic authorities in the present case. Such information would give the applicant and his lawyer reasonable opportunity to request for clarifying or complementing certain questions that would deem important.
Adamov v. Switzerland	*See List B*
Stojkovic v. France and Belgium No.: 25303/08 Type: Judgment Date: 27 October 2011 Articles: Y: 6§1, 6§3(c) Keywords: – fair trial – mutual assistance (hearing witnesses) Links: French only Translations: not available	*Circumstances:* French letter of request to Belgium requesting that the applicant be questioned as a "legally assisted witness" in the presence of an attorney. *Relevant complaint:* The applicant claimed that there was a violation of his defence rights as he had been questioned as a "legally assisted witness" by Belgian police without an attorney being present. He argued that an accusation cannot be based on evidence obtained through coercion or pressure and that the interest of Justice required that he should have been assisted by an attorney. *Court's conclusions:* The applicant's interview was conducted in accordance with the procedural regime applicable in Belgium, which provided for the questioning of all persons without any difference in treatment, whether or not there were any suspicions against them. The interview resulted exclusively from the execution of the letter of request. In that letter of request, the judge expressly stipulated that the applicant should be heard as a "legally assisted witness". That stipulation demonstrated, as required by French law, that there was evidence against the applicant which it made it plausible that he might have taken part in the perpetration of the offences. The interview had important repercussions on the applicant's situation so that there was a "criminal charge against him" which implied that he should have benefited from the protection offered under Article 6§1 and 6§3 of the Convention. While the restriction of the right concerned was not caused by French authorities, it was their

	duty to ensure that such a restriction did not compromise the fairness of the proceedings. The legal regime of the interview did not exempt the French authorities from verifying that it had been conducted in accordance with fundamental principles deriving from fair trial. Under Article 1 of the Convention, it was for the French authorities to ensure that the acts carried out in Belgium had not been in breach of the rights of the defence and thus to verify the fairness of the proceedings under their supervision.
Fąfrowicz v. Poland No.: 43609/07 Type: Judgment Date: 17 April 2012 Articles: N: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (service of documents) Links: English only Translations: not available	*Circumstances:* The applicant has been convicted in Poland on the basis of a statement of JH (present in the United States of America), whose presence in Poland has not been ensured by the trial court. *Relevant complaint:* The applicant's defence rights had been unduly curtailed as he could not cross-examine JH. The trial court had known JH's address in the USA but had not taken any action to secure his presence. *Court's assessment:* The trial court cannot be blamed for having failed to request international judicial assistance since it has not been established that the court knew JH's address in the USA.
Damir Sibgatullin v. Russia No.: 1413/05 Type: Judgment Date: 24 April 2012 Articles: Y: 6§1, 6§3(d), 38 Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (service of documents) Links: English only Translations: not available	*Circumstances:* Conviction of a Russian national in Russia for crimes committed in Uzbekistan. Russia had requested Uzbekistan to serve the summons to trial in Russia on witnesses in Uzbekistan but they failed to appear for various reasons and, therefore, their statements from pre-trial proceedings were read instead. *Relevant complaint:* The applicant insisted that the only direct evidence implicating him in the crimes he had been found guilty of was the statements by the witnesses in Uzbekistan. Therefore, it was important for the trial court to hear the witnesses in person and to provide the applicant with an opportunity to cross-examine them. *Court's assessment:* The Court is not convinced by the Government's argument that if the applicant had stayed in Uzbekistan he could have had an opportunity to take part in confrontation interviews with the prosecution witnesses, and there could accordingly have been no issue as regards the witnesses' absence from the trial. Furthermore, in the Court's view, there can be no question of waiver by the mere fact that an individual could have avoided, by acting diligently, the situation that led to the impairment of his rights. The conclusion is more salient in a case of a person without sufficient knowledge of his prosecution and of the charges against him and without the benefit of legal advice to be cautioned on the course of his actions, including on the possibility of his conduct being interpreted as an implied waiver of his fair trial rights. The Court reiterates that the applicant was

	only notified in person of the criminal proceedings against him upon his arrest in Russia in November 2003. It thus could not be inferred merely from his status as a fugitive from justice, which was founded on a presumption with an insufficient factual basis, that he had waived his right to a fair trial. The Court notes that the Regional Court did not have information explaining the reason for the absence of five of the eleven witnesses from the prosecution list. In fact, the trial court was not even aware whether the witnesses had been summoned. It also appears that it never received a response from the Uzbek authorities regarding Mr. A.'s attendance. The Regional Court, nevertheless, proceeded with the reading out of the depositions by those five witnesses and Mr. A., having noted that attempts to obtain their presence had already taken six months. While the Court is not unmindful of the domestic courts' obligation to secure the proper conduct of the trial and avoid undue delays in the criminal proceedings, it does not consider that a stay in the proceedings for the purpose of obtaining witnesses' testimony or at least clarifying the issue of their appearance at the trial, in which the applicant stood accused of a very serious offence and was risking a lengthy prison term, would have constituted an insuperable obstacle to the expediency of the proceedings at hand. The Regional Court excused the remaining witnesses, considering their absence to be justified either in view of their personal circumstances or because Uzbek officials had been unsuccessful in their attempts to find them. Regard being had to the circumstances of the case, the Court has serious doubts that the decision to accept the explanations and to excuse the witnesses could indeed be accepted as warranted. It considers that the Regional Court's review of the reasons for the witnesses' absence was not convincing. Whilst such reasons as inability to bear the costs of travel to Russia, poor health or a difficult family situation are relevant, the trial court did not go into the specific circumstances of the situation of each witness, and failed to examine whether any alternative means of securing their depositions in person would have been possible and sufficient. It also does not escape the Court's attention that under the relevant provisions of the Russian law witnesses were afforded a right to claim reimbursement of costs and expenses, including those of travel, incurred as a result of their participation in criminal proceedings. The Court is concerned with the Regional Court's failure to look beyond the ordinary means of securing the right of the defence to cross-examine witnesses, for instance by setting up a meeting between the applicant's lawyer and witnesses in Uzbekistan or using modern means of audio-visual communication to afford the defence an opportunity to put questions to the witnesses. Furthermore, while the Court understands the difficulties encountered by the authorities in terms of resources, it does not consider that reimbursing travel costs and expenses to the key witnesses for them to appear before the trial court would have constituted an insuperable obstacle.

D. List of case law relevant for the application of the Convention on the Transfer of Sentenced Persons (CETS 112) and its Additional Protocol (CETS 167)

Case Data	*Summary*
Drozd and Janousek v. France and Spain No.: 12747/87 Type: Judgment Date: 26 June 1992 Articles: N: 5§1, 6 Keywords: – fair trial – transfer of sentenced persons Links: English, French Translations: Slovenian	*Circumstances:* Serving a sentence of imprisonment, imposed in Andorra, in France or Spain. *Relevant complaint:* The applicants claimed that their detention was contrary to French public policy (*ordre public*), of which the Convention formed part; the French courts had not carried out any review of the judgments of an Andorran court whose composition and procedure had not complied with the requirements of Article 6 of the Convention. *Court's conclusion:* As the Convention does not require the Contracting Parties to impose its standards on third States or territories, France was not obliged to verify whether the proceedings which resulted in the conviction were compatible with all the requirements of Article 6 of the Convention. To require such a review of the manner in which a court not bound by the Convention had applied the principles enshrined in Article 6 of the Convention would also thwart the current trend towards strengthening international cooperation in the administration of justice, a trend which is in principle in the interests of the persons concerned. The Contracting States are, however, obliged to refuse their co-operation if it emerges that the conviction is the result of a flagrant denial of justice.
Selmouni v. France No.: 25803/94 Type: Judgment Date: 28 July 1999 Articles: Y: 3, 6§1 Keywords: ~~– fair trial~~ ~~– ill-treatment~~ – transfer of sentenced persons Links: English, French Translations: Georgian, Slovenian	*Note: This case could be deleted from the list as its one single aspect that concerns international judicial cooperation in criminal matters does not seem all that important and rather self-evident.* *Circumstances:* A Netherlands and Moroccan national serving a sentence of imprisonment in France. *Relevant complaint:* As part of his complaint concerning ill-treatment in the French prison, the applicant requested to be transferred to the Netherlands to serve the remainder by the sentence there. *Court's conclusions:* The Court reiterated that Article 41 of the Convention does not give it jurisdiction to make an order for transfer against a Contracting State.
Veermäe v. Finland No.: 38704/03	*Circumstances:* Transfer of an Estonian national from Finland to Estonia under Article 3 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons.

Type: Decision Date: 15 March 2005 Articles: N: 3, 5, 6, 14; 4 (Prot. 7) Keywords: – discrimination – expulsion – fair trial – ill-treatment – ne bis in idem – transfer of sentenced persons (Additional Protocol, Article 3) – transfer of sentenced persons (conversion of sentence) – transfer of sentenced persons (early release) Links: English, French Translations: not available	*Relevant complaint:* The applicant argued that in Finland, it would be possible to be released on parole after serving half his sentence, while in Estonia release on parole would only be possible after serving two-thirds of the sentence. *Court's conclusions:* The Court examined of its on motion whether the application raises an issue under Article 6 of the Convention, as the relevant question is whether the transfer, with the risk of a de facto longer sentence, violates Article 5 of the Convention and whether the transfer arrangements require a procedure offering the guarantees of Article 6 of the Convention. The possibility of a longer period of imprisonment in the administering State does not in itself render the deprivation of liberty arbitrary as long as the sentence to be served does not exceed the sentence imposed in the criminal proceedings. A flagrantly longer de facto sentence in the administering State could nevertheless give rise to an issue under Article 5 of the Convention. However, in view of the information concerning the Estonian practice in converting sentences, according to which a penalty imposed in Estonia would be likely to be less severe than a penalty imposed in Finland, the Court considered that there were no substantial grounds for believing that the sentence to be served would be flagrantly disproportionate, if disproportionate at all. As the conversion of the sentence will be determined by a Finnish court, no issue arises under Article 6 of the Convention.
Csoszánszki v. Sweden No.: 22318/02 Type: Decision Date: 27 June 2006 Articles: N: 5, 6, 7 Keywords: – fair trial – nulla poena sine lege – transfer of sentenced persons (Additional Protocol, Article 3) – transfer of sentenced	*Circumstances:* Transfer of a Hungarian national from Sweden to Hungary under Article 3 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons. After the transfer, the Budapest Regional Court converted the sentence into 10 years of imprisonment to be served in a strict prison regime (eligible for early release after 4/5 of the sentence). *Relevant complaint:* The transfer to Hungary resulted in a de facto increase in the term of imprisonment by sixteen-months. *Court's conclusions:* The likely additional period of detention of sixteen months in Hungary (corresponding to an increase of 20% but still well within the sentence imposed) is not so disproportionate that it will involve a breach of Article 5 of the Convention. While the applicant's transfer is likely to delay the date of his conditional release and may, as claimed by the applicant, subject him to harsher prison conditions, the Convention does not confer the right to such release or the right to serve a prison sentence in accordance with a particular regime. Nor does it require that parole decisions be taken by a court. Furthermore, questions of conditional release relate to the

persons (conversion of sentence) – transfer of sentenced persons (early release) Links: English only Translations: not available	manner of implementation of a prison sentence. As a transfer is seen as a measure of execution of a sentence and the Convention on the Transfer of Sentenced Persons provides that the administering State may decide on the enforcement of the sentence in accordance with its own laws, Article 6 of the Convention is not applicable to transfer decisions. Even if the Additional Protocol to the Transfer Convention was not in force in Sweden at the time of the commission of the offence, under the terms of Article 7 of the Additional Protocol it was still applicable to any enforcement of the sentence taking place after its entry into force. Furthermore, transfer decisions cannot be considered as amounting to a "penalty" within the meaning of Article 7 of the Convention.
Garkavyy v. Ukraine No.: 25978/07 Type: Judgment Date: 18 February 2010 Articles: Y: 5§1 Keywords: – custody (lawfulness) – extradition (custody) – in absentia – international validity of criminal judgments – transfer of enforcement of sentence – transfer of proceedings – transfer of sentenced persons (Additional Protocol, Article 2) Links: English only Translations: not available	*Circumstances:* Ukrainian national, convicted and sentenced in the Czech Republic in absentia, was arrested in Ukraine on the basis of an international arrest warrant issued against him by the Czech Republic and remanded in custody for 40 days under Article 16 of the European Convention on Extradition. The Czech Republic did not request extradition but instead requested that Ukraine takes over criminal proceedings from the Czech Republic under Article 8(2) of the European Convention on the Transfer of Proceedings in Criminal Matters. Instead, Ukraine treated this request as a request under the European Convention on the International Validity of Criminal Judgments (without being asked to do so by the Czech Republic, even though the Czech Republic is not a State Party to it and even though Ukraine made a reservation to it excluding in absentia judgments) and further extended the applicant's custody under its Articles 32 and 33. Subsequently, Ukrainian courts attempted to apply the Convention on the Transfer of Sentenced Persons and recognize the in absentia judgement issued by Czech courts (again, without being asked to do so by the Czech Republic and even though the applicant did not consent to the transfer and had in fact already been present in Ukraine). Following that, the Ukrainian court decided to apply also Article 2 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons (again, without being asked to do so by the Czech Republic and even though the judgment was the result of an in absentia trial). *Relevant complaints:* 1. The applicant's detention with a view to extradition had been unlawful in terms of the relevant instruments, both national and international, since the Ukrainian Constitution and the Criminal Code unequivocally excluded the possibility of extraditing Ukrainian nationals. 2. The applicant's detention under on Articles 32 and 33 of the European Convention on the International Validity of Criminal Judgments had been unlawful, as that Convention was not applicable in relations between Ukraine and the Czech Republic, given that the latter was not a party to the Convention. His detention had actually been aimed at enforcement of the judgment rendered in absentia and was therefore contrary to Article 5§1 of the Convention. The recognition of the judgment of the Prague City Court by the Ukrainian court had been made without sufficient legal grounds and contrary to the international treaties to

	which the courts referred. Furthermore, at no stage of the proceedings was he able to defend himself and have a proper trial. *Court's conclusions:* 1. The applicant's detention was ordered for forty days by the Ukrainian court under the European Convention on Extradition, although being a Ukrainian national he could not be extradited, as the domestic legislation excludes, in non-ambiguous terms, the extradition of Ukrainian nationals. The Court considers that the facts of the case demonstrate that the applicant was detained during the period in question without sufficient legal basis in the domestic law. 2. The Kyiv Court of Appeal, after examining the case, reclassified the request of the Czech authorities for transfer of criminal proceedings in the applicant's case under the European Convention on the Transfer of Proceedings in Criminal Matters to a request for enforcement of the judgment of the Prague City Court under the Convention on the Transfer of Sentenced Persons and the Protocol thereto, although no request under this Convention had been made and the provisions of the Protocol to this Convention were not applicable to persons tried in absentia. The Court is not convinced that such solution chosen by the domestic courts meets the requirements of foreseeability and lawfulness.
Smith v. Germany No.: 27801/05 Type: Judgment Date: 1 April 2010 Articles: Y: 6§1 Keywords: – fair trial – right of access to court – transfer of sentenced persons Links: English only Translations: not available	*Circumstances:* The applicant, a Dutch national, was convicted by the Lübeck Regional Court of drug offences and sentences to tree and a half year of imprisonment. He had voluntarily returned from the Netherlands to stand trial in Germany after the Lübeck Public Prosecutor gave the applicant an assurance that the prosecution service would institute proceedings under Article 11 of the Convention on the Transfer of Sentenced Persons. However, the German Ministry of Justice refrained from lodging a formal application with the Netherlands. *Relevant complaint:* The applicant complained under Article 6§1 of the Convention about the domestic authorities' refusal to institute transfer proceedings under Article 11 of the Transfer Convention, contrary to the previous assurance given by the Public Prosecutor. *Court's conclusions:* Article 6§1 of the Convention under its criminal head is, under the specific circumstances of the present case, applicable to the proceedings concerning the applicant's transfer request in so far as they relate to the assurance given by the public prosecution during the criminal proceedings. The decision taken by the Justice Ministry on the transfer request does not solely depend on the public prosecutor's recommendations and on considerations regarding the execution of sentence, but also on considerations of foreign policy which fall within the core area of public law. It is therefore acceptable if this part of the decision is not subject to judicial review. However, it has not been shown that there was a possibility of instituting an effective action for review of the refusal to institute proceedings after a relevant assurance. The applicant has been denied access to a court with regard to the part of the decision on his transfer request which did not concern considerations of public policy.

Müller v. Czech Republic No.: 48058/09 Type: Decision Date: 6 September 2011 Articles: N: 7 Keywords: – transfer of sentenced persons (Additional Protocol, Article 3) Links: English only Translations: not available	*Circumstances:* Transfer of a Czech national from Germany to the Czech Republic under Article 3 of the Additional Protocol. *Relevant complaints:* 1. Czech courts ordered the applicant to serve a sentence that was not envisioned in the Czech law for the crime he had committed. He argued that this penalty was not foreseeable for him because at the time he committed his offence transfer from Germany had not been possible without his consent as the Additional Protocol to the Transfer Convention had been concluded only after his acts. 2. The conditions of imprisonment of prisoners sentenced to life are harsher in the Czech Republic than in Germany. 3. Different rules on the possibility of release on parole. *Court's conclusions:* 1. A distinction is drawn between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of a "penalty"; Article 7 of the Convention applies only to the former. The applicant was tried and convicted in Germany to life imprisonment. The Czech courts only validated his conviction by the German courts and the High Court decided that the sentence could be enforced in the Czech Republic. Therefore, the Court does not consider that the Czech courts decided on a "criminal offence" committed by the applicant or that their decisions could be considered as measures imposed following conviction for a "criminal offence". The decision to enforce the judgment in the Czech Republic only concerns the place of the execution of the applicant's sentence. Consequently, the applicant's arguments that the application of the Additional Protocol to the Convention on the Transfer of Sentenced Persons was retroactive are not relevant. 2. The issue lies solely in the alleged differences in the conditions of detention in a prison. The penalty itself remains the same – that is a deprivation of liberty in a prison for a set term. The Court, therefore, considers that these alleged differences fall within the sphere of execution of a penalty and thus no issue arises under Article 7 of the Convention. 3. A change in the conditions for release relates to the execution of sentence and Article 7 of the Convention is not applicable.

E. List of case law relevant for the application of the European Convention on the International Validity of Criminal Judgments (CETS 070)

Case Data	*Summary*
Grori v. Albania No.: 25336/04 Type: Judgment Date: 7 July 2009 Articles: Y: 3, 5§1, 34 Keywords: ~~– ill-treatment~~ ~~– interim measure~~ – international validity of criminal judgments – transfer of enforcement of sentence – transfer of proceedings Links: English only Translations: not available	*Circumstances:* On 6 October 1997 the Italian authorities issued an arrest warrant against the applicant, an Albanian national, charging him with homicide. On 2 February 2001 he was sentenced in absentia to life imprisonment by the Milan Assize Court of Appeal on a count of murder and to five years of imprisonment for illegal possession of arms. On 16 February 2001 the Italian court issued a second arrest warrant, charging the applicant with participation in a criminal organisation and international narcotics trafficking. On 30 April 2001 Interpol Rome requested the Albanian authorities to initiate criminal proceedings against the applicant for his alleged involvement in drug trafficking committed on Italian territory. The applicant was arrested in Albania on 30 April 2001 on the basis of the arrest warrant issued on 16 February 2001 and sentenced finally by the Albanian Supreme Court on 23 June 2006 to 15 years of imprisonment. On 28 May 2002 the Italian Ministry of Justice transmitted the judgment of 2 February 2001 for information purposes to the Albanian Embassy in Rome, a request to validate the Italian sentence in Albania was not made, as neither country was party to any international agreement on the matter. On 15 May 2002 the Albanian District Court ordered the applicant's detention pending the proceedings for the validation and enforcement of the Milan Assize Court of Appeal's judgment of 2 February 2001. Article 514 of the Albanian CCP (before being amended by law of 13 June 2002) governing the proceedings for the validation and enforcement of a sentence imposed by a foreign court required the consent of the sentenced person. Though the applicant did not consent to the validation of the Italian judgment, the Albanian District Court held on 20 May 2003 that the sentence imposed by the Milan Assize Court of Appeal was compatible with the provisions of the Albanian CCP and ruled that the applicant should serve cumulative sentence of life imprisonment in Albania on a count of murder and a count of illegal possession of firearms. The applicant appealed in vain to the Court of Appeal, the Supreme Court and the Constitutional Court. *Relevant complaint:* The applicant's imprisonment from 15 May 2002 onwards had been unlawful amounting to a violation of Article 5§1 of the Convention. The applicant observed that, according to the Government's submissions, it was based on the general provisions of the European Convention on the Transfer of Proceedings in Criminal Matters, even though that Convention had not been ratified by Albania at the material time whereas, according to the court's decisions, his detention was based on the general provisions of international law. *Court's conclusions:* The detention of the applicant from 15 May 2002 onwards was contrary to Article 5§1 of the Convention, as the Supreme and Constitutional Courts confined themselves to considering that the "old" provision of Article 514 CCP was inadequate and that a legal basis could be provided by the generally recognised

	norms of international law in accordance with the principle of good will and reciprocity. The courts referred to the European Convention on the Internationals Validity of Criminal Judgements which, however, was not in force in respect of either country at the material time. The legal basis found by the Supreme Court can therefore scarcely be said to meet the qualitative components of the "lawfulness" requirement as regards the applicant's detention and the conversion of the sentence imposed by the Italian courts.
Garkavyy v. Ukraine	*See List D*

F. List of case law relevant for the application of the European Convention on the Transfer of Proceedings in Criminal Matters (CETS 073)

Case Data	*Summary*
Grori v. Albania	*See List E*
Garkavyy v. Ukraine	*See List D*

G. The HUDOC database

The search page to the database of the case law of the European Court of Human Rights can be accessed at this address: http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en.

To search for a judgment or a decision in the HUDOC database effectively, it is recommended

- that in the "ECHR Document Collections" column on the left, all boxes under the "HUDOC Collection" are ticked off (in order to search not only for judgments but also for decisions); and
- that under "Language", both English and French are ticked off (some judgments and decisions are in French version only or in English version only).

Your web browser needs to be set to allow "cookies", too [see your web browser's settings (privacy settings) if errors occur after attempted search].