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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 Co-Operation in Criminal Matters

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Case Law by the European Court of Human Rights of Relevance for Application of the European Conventions on International Co-operation in Criminal Matters[1]

8 November 2012

IMPORTANT NOTES:

- *The following lists and index have been prepared by PC-OC members and do not bind the Court or the Council of Europe.*
- *The lists and index is not exhaustive and is to be used only for reference and as a supplementary tool for practitioners.*
- *In the index of keywords (A), the keywords, as well as the cases related to each keyword are arranged alphabetically.*
- *In the lists (B through F) of cases relevant for each European convention, the cases are arranged chronologically.*
- *Articles of the Convention referred to in each list follow the numbering applicable at the time of the Court's judgment or decision (i.e. before the renumbering of the Convention's provisions following from some of the Protocols to the Convention in the earlier case law).*
- *Texts of judgments and decisions of the Court can be found in the HUDOC database (see below sub G).*
- *Some English translations of the Court's judgments and decisions, originally delivered in French and available in the HUDOC database, are summaries of the original judgments and decisions and not the judgments and decisions in full.*

A. Index of keywords with relevant case law:

Keyword	***Case Title***	***Application No.***
absentia – see *in absentia*		
Additional Protocol, Article 2 – see *transfer of sentenced persons (Additional Protocol, Article 2)*		
Additional Protocol, Article 3 – see *transfer of sentenced persons (Additional Protocol, Article 3)*		
admissibility of evidence – see *mutual assistance (admissibility of evidence)*		
assurances[2]	Abdulazhon Isakov v. Russia	14049/08

[1]) These Conventions include in particular: CETS Nos. 24 (Extradition and Additional Protocols ETS Nos. 86, 98 and 209), 30 (Mutual assistance in criminal matters and Additional Protocols ETS Nos. 99 and 182), 51 (Supervision of conditionally sentenced or conditionally released offenders), 70 (International validity of criminal judgments), 73 (Transfer of criminal proceedings), 112 (Transfer of sentenced persons and its Additional Protocol ETS No. 167).

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[2]) Including diplomatic assurances.

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	Keshmiri v. Turkey	36370/08
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[3]) Keyword "expulsion" includes also other forms of deportation, such as refusal to renew residence permit.

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

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	Cruz Varas v. Sweden	15576/89
	Khodzhayev v. Russia	52466/08
	Labsi v. Slovakia	33809/08
	Lynas v. Switzerland	7317/75
	Mamatkulov and Askarov v. Turkey	46827/99 & 46951/99
	Mannai v. Italy	9961/10
	Molotchko v. Ukraine	12275/10
	Rrapo v. Albania	58555/10
	Shamayev and others v. Georgia and Russia	36378/02

	Toumi v. Italy	25716/09
	Trabelsi v. Italy	50163/08
	Umirov v. Russia	17455/11
	Yoh-Ekale Mwanje v. Belgium	10486/10
international validity of criminal judgments – see *transfer of enforcement of sentence*		
lawfulness of custody – see *custody (lawfulness)*		
length of custody – see *custody (length)*		
life sentence[5]	Babar Ahmad and others v. United Kingdom (Decision)	24027/07, 11949/08 & 36742/08
	Einhorn v. France	71555/01
	Harkins and Edwards v. United Kingdom	9146/07 & 32650/07
	Kafkaris v. Cyprus	21906/04
	Babar Ahmad and Others v. United Kingdom (Judgment)	24027/07, 11949/08, 36742/08, 66911/09 & 67354/09
	Nivette v. France	44190/98
	Vinter and others v. United Kingdom	66069/09 & 130/10 & 3896/10
mutual assistance	Rantsev v. Cyprus and Russia	25965/04
mutual assistance (admissibility of evidence)	A. M. v. Italy	37019/97
	Solakov v. FYROM	47023/99
	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

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

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*		
nulla poena sine lege	Csoszánszki v. Sweden	22318/02
obligation to investigate – see *obligation to prosecute*		
obligation to prosecute[6]	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 or expulsion	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*		
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[7]	Garkavyy v. Ukraine	25978/07
	Grori v. Albania	25336/04
transfer of proceedings	Garkavyy v. Ukraine	25978/07
	Grori v. Albania	25336/04

[6]) Keyword "obligation to prosecute" means also "obligation to investigate".
[7]) 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.

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)*		

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 or expulsion 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	*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

Type: Judgment 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	applicant would be tortured by the Chilean authorities and because of the trauma involved in being sent 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	*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

Articles: N: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	all the material placed before it or, if necessary, material obtained proprio motu. The existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the 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	*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

Date: 24 June 1996 Articles: N: 3, 5§1 Keywords: – custody (lawfulness) – expulsion – relation between extradition and deportation or expulsion Links: English, French Translations: not available	an international arrest warrant. Extradition procedure laid down by French law had not been followed, 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	*Circumstances:* Expulsion from the United Kingdom to St. Kitts where he could not receive adequate medical treatment for AIDS and AIDS-related infections.

Type: Judgment Date: 2 May 1997 Articles: Y: 3; N: 8, 13 Keywords: – expulsion – ill-treatment Links: English, French Translations: Russian	*Relevant complaint:* Expulsion to St. Kitts would condemn the applicant to spend his remaining days in pain 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:	*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.

– asylum – expulsion – ill-treatment Links: English, French Translations: not available	The automatic and mechanical application of such a short time-limit for submitting an asylum application must 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	*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

family) Links: English, French Translations: not available	which he is going to be expelled; the time which has elapsed since the commission of the offence and the 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	*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

Type: Judgment 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	of the Convention that satisfied the requirements of Article 13 of the Convention. There was no guarantee of 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)	*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

– ill-treatment Links: English only Translations: not available	considers, taking into account the margin of appreciation left to the Contracting States in such circumstances that the decision to extradite the applicant was not disproportionate to the legitimate aims pursued.
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	*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.

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 Translations: Ukrainian	*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 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:	*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.

– expulsion – ill-treatment Links: French only Translations: not available	*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 or expulsion 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	*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

family) – ill-treatment Links: English only Translations: not available	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 Translations: not available	*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[8], 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. 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	*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.

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

– custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – ill-treatment – interim measure Links: English only Translations: not available	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 No.: 23944/05 Type: Decision Date: 8 March 2007 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	*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 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 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	*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 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 – life sentence Links: English, French Translations: Armenian	*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 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 Links: English, French Translations: Italian	*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. 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) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment Links: English, French Translations: not available	*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 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 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) – ill-treatment Links: English only Translations: not available	*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 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 – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*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 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) – ill-treatment Links: English only Translations: Russian	*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 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	*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

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	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 – ill-treatment – interim measure Links: French only Translations: not available	*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 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 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)	*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 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.

Links: English only Translations: not available	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	*See the summary of the very similar case of Ben Khemais v. Italy.*
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	*See the summary of the very similar case of Ben Khemais v. Italy.*

Date: 5 May 2009 Articles: Y: 3 Keyword: – assurances – expulsion – ill-treatment Links: French only Translations: not available	
Abdolkhani and Karimnia v. Turkey (No. 1) No.: 30471/08 Type: Judgment 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	*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 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) Links: English only Translations: Russian	*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 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	*Circumstances:* Extradition from Ukraine to Kazakhstan for the purposes of prosecution that could result in

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) – death penalty – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Russian	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". *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:	*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

– assurances – death penalty – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Russian	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	*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

refusal) – ill-treatment – in absentia Links: English only Translations: not available	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	*Circumstances:* Expulsion from Turkey to Tunisia of a person who had been granted refugee status by the

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	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 Type: Judgment Date: 13 April 2010 Articles: Y: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	*See the summary of the very similar case of Abdolkhani and Karimnia v. Turkey (No. 1).*
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)	*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

– expulsion – ill-treatment Links: English only Translations: not available	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 – ill-treatment – interim measure Links: French only Translations: not available	*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 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 – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	*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 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)	*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.

– custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*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 Links: English, French Translations: Serbian, Turkish	*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 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 – death penalty – extradition (grounds for refusal) – fair trial – ill-treatment – life sentence Links: English only Translations: not available	*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 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) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment – nationality Links: English only Translations: not available	*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 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.]*
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	*Circumstances:* Extradition of two Russian nationals of Chechen ethnic origin from Slovakia to Russia. both applicants were suspected of taking part as members of an organised group, in the killing of two agents of the Ministry of the Interior in Grozny in June 2001. *Relevant complaints:* The applicants complained that their extradition to the Russian Federation would amount to a breach of their rights under Articles 3 and 6 of the Convention and under Article I of Protocol No. 6. *Court's conclusions:* In the cases of the applicants, both the Supreme Court and the Constitutional Court of Slovakia examined whether they risk being subjected to capital punishment or treatment contrary to Article 3 of the Convention in case of their extradition to the Russian Federation. In their respective decisions approving the applicants' extraditions those courts took note of the guarantees given by the Russian authorities. The Supreme Court analyzed the law and practice in Russia and concluded that there existed no real risk that the death penalty would be imposed for the offences imputed to the first applicant. As regards the second applicant, the Supreme Court considered sufficient the guarantees offered by the Office of the Prosecutor General of the Russian Federation, according to which the second applicant would not face the death penalty and that such punishment was in any event not carried out in Russia. In two letters of 12 October 2009 addressed to Slovakian authorities the Office of the Prosecutor General of the Russian Federation confirmed the guarantees previously given. The letters explicitly state that it has been guaranteed that capital punishment would not be applied in respect of the applicants. - The Court considers it important that they were issued under the authority of the Prosecutor General, who, within the Russian system, supervises the activities of all prosecutors in the Russian Federation, including the argumentation of the case for the prosecution before the courts. - There are no grounds to doubt the credibility of the assurance that capital punishment would not be applied in respect of the applicants. In addition, that assurance was later expressly confirmed in the third-party comments submitted by the Russian Government. - The Slovakian authorities, and in particular the Supreme Court, thoroughly examined whether the applicants

	risked ill- treatment if extradited to Russia. It held that a decision on the extradition of a particular person for the purpose of his or her criminal prosecution could not be exclusively based on the political situation existing in a part of the Russian Federation and the fact that the State's actions in that respect had been subjected to international criticism. - Various internationally available data on the use of violence by Russian armed forces against the civilian population of Chechnya did not prove the existence of a specific risk that the applicants would be ill-treated if extradited. - Furthermore, the Supreme Court held that there existed no specific information about the applicants' particular cases permitting a different conclusion as to the witness whose statements has given rise to the applicants' prosecution, his alleged ill-treatment did not constitute proof that the present applicants would be subjected to treatment incompatible with Article 3 of the Convention. In proceedings before the Court the applicants have not submitted any document supporting their allegation that Mr Shakhayev was ill-treated following his extradition to Russia, nor does it appear from the documents submitted that such evidence was produced in the proceedings before Slovakian courts. - The Supreme Court's decision further stated that Russia was a member State of the Council of Europe and a Contracting Party to the Convention. All persons within its jurisdiction were therefore entitled to seek redress before the Court as regards any alleged breach of their Convention rights by the Russian authorities. A possible failure by Russian authorities to comply with the guarantees issued by them would undermine the trust of its partners and affect further processing of similar requests. The assurances protecting the applicants from treatment contrary to Article 3 if extradited were given by authorities of a member State of the Council of Europe and a Contracting Party to the Convention and that a possible failure to respect such assurances would seriously undermine that State's credibility. In additional letters of 12 October 2009 addressed to the Slovakian authorities the Deputy Prosecutor General of the Russian Federation confirmed the guarantees previously given in respect of the applicants including respect for their physical and psychological integrity. The letters indicate that, if convicted and sentenced to a prison term, the applicants would serve their sentence in a federal prison where the Convention and the European Standard Minimum Rules for the Treatment of Prisoners are taken into account. The Embassy of Slovakia to Russia would be informed of the place of the second applicant's detention and Slovakian diplomatic representatives would be able to visit the second applicant and speak to him without third persons present. The applicants would be provided with sufficient medical care. In the case of *Gasayev v. Spain*, the Court considered relevant a similar assurance allowing for monitoring, through diplomatic representation of the extraditing State, of the undertaking by the Russian authorities that Article 3 of the Convention would be respected following the applicant's extradition. Unlike in *Gasayev*,

	diplomatic monitoring of compliance with the assurances given by the Russian authorities was not requested by the domestic courts. It is therefore admittedly within the discretionary power of Slovakian authorities to avail themselves, or not, of the opportunity to carry out such monitoring. Nevertheless, by offering that opportunity the Russian authorities undoubtedly gave additional weight to the guarantees previously given. - Finally, the Supreme Court considered it relevant that a refusal to extradite the applicants would affect the rights of other persons, in particular the relatives of the officers who had been killed, who were entitled to have an effective investigation carried out. The Court does not find arbitrary or otherwise unacceptable the conclusion that the documents and facts to which the applicants referred did not establish that extradition would have imposed a personal threat on them. It follows that this part of the application is manifestly ill-founded and must be rejected. - An issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive suffered or risked suffering a flagrant denial of a fair trial in the requesting country. The authorities of the Russian Federation, which is a Contracting Party to the Convention, expressly guaranteed a fair trial to the applicants including the assistance of defense counsel and, if needed, of interpreters. There is no indication that in the course of their trial the applicants would be deprived of a fair hearing within the meaning of Article 6 of the Convention. ln addition, the Russian Government explicitly guaranteed that they would have the possibility, if need be, to lodge an application to the Court challenging any shortcomings in the domestic proceedings. It follows that this complaint is manifestly ill-founded and must be rejected. *Remark*: immediately after this decision, the applicants launched new applications, requesting and obtaining new provisional measures under Rule 39 and relying on a wider range of alleged violations of the Convention. This new matter is still pending before the Court.
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 refusal)	*Circumstances:* Extradition from Russia to Tajikistan. The applicant was one of the leaders of the United Tajik Opposition (UTO), a united opposition front consisting of liberal democratic reformists and Islamists during the civil war (starting in May 1992). The applicant stayed at his friend's flat in the town of Korolev, in the Moscow Region, awaiting examination of his asylum application. In the evening of 15 April 2005 the applicant and his friend were walking a dog. At some point the applicant saw two persons wearing uniforms of the Russian State Inspectorate for Road Safety (*«ГИБДД»*, "GIBDD"). He assumed that those men intended to arrest him and told his friend to go home. Then the applicant noticed that the area had been surrounded by twenty-five or thirty men with Slavic features wearing civilian clothes. Without identifying themselves or giving any explanations, the two men in GIBDD uniforms, assisted by several men in civilian clothes, handcuffed the applicant. One of the men hit the applicant on the head and placed him in a car; it drove off. After 400 or 500 metres the car stopped; the men in the GIBDD uniforms took the applicant out and placed

– ill-treatment Links: English only Translations: not available	him in a minivan. They drove for a while. Eventually the minivan stopped and the applicant was taken outside. The surroundings were unknown to him. The applicant was escorted to a sauna and detained there. The guards beat the applicant. He asked for a lawyer, but in vain. On 16 April 2005 the applicant was taken to a forest. The men who had apprehended him met a group of people and conversed with them there. Having listened to them talking, the applicant assumed that the newly arrived people were servicemen of the Russian law-enforcement agencies. At some point the servicemen put a mask on the applicant's face. They did not identify themselves, nor did they give any explanations of their actions. They spoke unaccented Russian. Later they took the applicant with them and escorted him to an airport. The applicant's identity papers were not checked. While boarding the plane, the applicant heard the servicemen talking to a woman who apparently knew them. During the flight the applicant, still blindfolded, heard no instructions or other information usually conveyed in a civil aircraft. On the morning of 17 April 2005 the aircraft landed at Dushanbe Airport and the applicant was handed over to the Tajik law-enforcement agencies. *Relevant complaints:* 1. The applicant complained that as a result of his unlawful removal to Tajikistan he had been exposed to ill-treatment and persecution for his political views, in breach of Article 3 of the Convention. 2. The applicant complained that on 15 April 2005 he had been arrested by Russian officials in breach of domestic law. The detention was thus unlawful and contrary to article 5§1. *Court's conclusions:* Preliminary issues. - Since the parties are in strong disagreement in their respective accounts of the circumstances of the present case, it is necessary for the Court to establish the facts concerning the applicant's transfer to Tajikistan. it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place. in assessing evidence, it applies the standard of proof "beyond reasonable doubt". However, in the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically

	linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation). In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation. In the present case, the Court points out that the applicant provided a generally clear and coherent description of the events relating to his transfer from Russia to Tajikistan. His allegation that he was *de facto* unlawfully extradited by the Russian authorities is supported by the reports by the US Department of State. Furthermore, the Tajik Ministry of Foreign Affairs officially informed the Office of the UNHCHR that the applicant had been "officially extradited to the Tajik authorities by the Russian law-enforcement agencies". The Government provided no explanation as to the nature of the statement in question, merely asserting that it "did not correspond to the facts [of the case]". The Government provided no version capable of explaining how the applicant, last seen in the Moscow Region in the evening of 15 April 2005 and admitted to the Tajik prison on 17 April 2005, had arrived in Tajikistan. They merely stated that the investigators in charge of the proceedings relating to the applicant's kidnapping had not obtained any information supporting the hypothesis that the applicant had taken a flight from Chkalovskiy Airport. However, they did not produce any evidence from the investigation capable of showing what measures had been taken to disprove the applicant's allegations. The Court considers that, whereas the applicant made out a *prima facie* case that he had been arrested and transferred to Tajikistan by Russian officials, the Government failed to persuasively refute his allegations and to provide a satisfactory and convincing explanation as to how the applicant arrived in Dushanbe. It is thus established that on 15 April 2005 the applicant was arrested by Russian State agents and that he remained under their control until his transfer to the Tajik authorities. - The complaint is admissible *ratione loci*. The Convention does not govern the actions of States not Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention standards on other States, however, liability of an extraditing Contracting State under the Convention arises not from acts which occur outside its jurisdiction, but from actions imputable to that State which have as a direct consequence exposure of an individual to ill-treatment proscribed by Article 3. 1. The general political climate prevailing at the material time in Tajikistan could have given reasons to assume that the applicant would be subjected to ill-treatment in the receiving country. Evidence from a number of objective sources undoubtedly illustrates that in 2005 the overall human-rights situation in Tajikistan gave rise to serious concerns. Given that the Government failed to counter the allegations made in the reports by reputable organisations, ill-treatment of detainees was an enduring problem in Tajikistan in 2005. The general

	situation in the country of destination should be supported by specific allegations and corroborated by other evidence. The authorities of the requested State should have assessed the risks of ill-treatment prior to taking the decision on removal. The applicant's personal situation gave reasons to suggest that he would run a serious risk of ill-treatment in Tajikistan since he had been one of the possible challengers to President Rakhmonov in the presidential race. By the time of his removal from Russian territory reports concerning the political persecution and ill-treatment of Mr Shamsiddinov, another opposition leader and critic of the regime, had already been issued. There existed special distinguishing features in the applicant's case which could and ought to have enabled the Russian authorities to foresee that he might be ill-treated in Tajikistan. The fact that it is impossible to establish whether the applicant was actually subjected to ill-treatment following his return to Dushanbe, as he alleged both before the Court and before other international organisations, has no bearing on the Court's findings. The Court is particularly struck by the fact that the Russian authorities blatantly failed to assess the risks of ill-treatment the applicant could face in Tajikistan. In the absence of an extradition order the applicant was deprived of an opportunity to appeal to a court against his removal – a very basic procedural safeguard against being subjected to proscribed treatment in the receiving country. The applicant's removal to Tajikistan was in breach of the respondent State's obligation to protect him against risks of ill-treatment. 2. No detention which is arbitrary can be compatible with Article 5§1. The notion of "arbitrariness" in this context extending beyond the lack of conformity with national law. While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5§1, key principles have been developed on a case-by-case basis. Moreover, the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved. For example detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities; where the domestic authorities have neglected to attempt to apply the relevant legislation correctly; or where judicial authorities have authorised detention for a prolonged period of time without giving any grounds for doing so in their decisions. Referring to its above findings as to the establishment of the facts of the present case, it is deeply regrettable that such opaque methods were employed by State agents as these practices could not only unsettle legal certainty and instil a feeling of personal insecurity in individuals, but could also generally risk undermining public respect for and confidence in the domestic authorities. The applicant's detention was not based on a decision issued pursuant to national laws. It is inconceivable that in a State subject to the rule of law a person may be deprived of his liberty in the absence of any legitimate authorisation for it . The applicant's deprivation of liberty on 15 April 2005 was in pursuance of an unlawful removal designed to circumvent the Russian Prosecutor General's Office's dismissal of the extradition request, and not to "detention" necessary in

	the ordinary course of "action ... taken with a view to deportation or extradition". Moreover, the applicant's detention was not acknowledged or logged in any arrest or detention records and thus constituted a complete negation of the guarantees of liberty and security of person contained in Article 5 of the Convention and a most grave violation of that article.
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	*Circumstances:* Extradition of a Kazakh national from Ukraine to Kazakhstan. The applicant worked for the Kazakh opposition. He was a staff member of the biggest bank of Kazakhstan (BTA) that was nationalised in 2009. He was prosecuted for having participated with the management of BTA in misappropriation of financial resources. *Relevant complaints:* The applicant complained that if extradited to Kazakhstan he would face the risk of being subjected to ill-treatment by the Kazakh authorities. The applicant based his claim on his past as an opposition sympathizer. *Court's conclusions:* The provisional measure was lifted in the course of the proceedings before the Court. The General Prosecutor's Office of Kazakhstan provided diplomatic assurances that the Ukranian Diplomatic mission would be allowed to visit the extradited person, he would have access to such official at any time and their meetings would be free of supervision. In the circumstances of the present case, international documents available demonstrate some improvement in the human rights situation recently and in particular as to conditions of detention. Therefore, the Court is called to reassess its previous findings in the other cases concerning extradition to Kazakhstan, notably in the cases of *Kaboulov* and *Baysakov and Others*. It further notes that international reports still voice serious concerns as to the human rights situation in Kazakhstan, in particular with regard to political rights and freedoms. However, there is no indication that the human rights situation in Kazakhstan at present is serious enough to call for a total ban on extradition to that country (see and compare *Soldatenko v. Ukraine*, § 72 and *Kamyshev*, § 44). Reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition. In this regard the applicant asserted that he did not belong to the political opposition or to any other vulnerable group. The applicant's allegation that any criminal suspect in Kazakhstan runs a risk of ill-treatment is too general and not corroborated by any other evidence. Furthermore, his submission that his prosecution is part of a politically motivated campaign against the managers of the BTA Bank is not supported by any documents or other evidence. For instance, the US State Department, which reported on the politically motivated prosecution of Mr Ablyazov in 2002-2003, did not mention the proceedings against the BTA Bank managers in its recent report for 2009 either as an example of political repression or otherwise. Therefore, it cannot be said that the applicant referred to any individual circumstances which could substantiate his fears of ill-treatment. The applicant has failed to substantiate his allegations that his extradition to Kazakhstan would be in violation of

	Article 3 of the Convention.
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 Links: English only Translations: not available	*Circumstances:* Extradition of an Uzbek national from Russia to Uzbekistan. The applicant was convicted and sentenced at several earlier occasions in Uzbekistan. While in the hands of Uzbek officials he was subjected to ill-treatment. *Relevant complaints:* 1 . The applicant complained that if extradited he would be ill-treated in Uzbekistan in breach of Article 3. 2. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition had been "unlawful". He also complained under Article 5 § 4 of the Convention that he could not challenge in the Russian courts the lawfulness of his detention pending extradition. 3. He contended that he had had no effective remedies in respect of his complaint under Article 3 of the Convention, in breach of Article 13 of the Convention. *Court's conclusions:* 1. Regarding article 3: There are disquieting reports on human rights situation in Uzbekistan, which, admittedly, is far from being perfect. Nonetheless, it emphasises that reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition. The Court is mindful of the fact that it has on several occasions found violations of Article 3 of the Convention in cases involving extradition to Uzbekistan. However, the applicants in those cases had been charged with political crimes (see inter alia *Ismoilov and Others v. Russia*, § 122) and thus were members of a group systematically exposed to a practice of ill-treatment as confirmed by reports by reliable independent international sources. The applicant in the present case, however, is charged in Uzbekistan with aggravated theft, an ordinary crime against property. He does not assert that he is being persecuted for political reasons. Nor does he claim to belong to any proscribed religious movement. It does not follow from the materials at the Court's disposal that the applicant belongs to any other vulnerable groups susceptible of being ill-treated in the requesting country. The applicant's allegations that any criminal suspect in Uzbekistan runs a risk of ill-treatment are too general and there is no indication that the human rights situation in the requesting country is serious enough to call for a total ban on extradition to it. Therefore, it cannot be said that the applicant referred to any individual circumstances which could substantiate his fears of ill-treatment. As to the applicant's reference to previous instances of ill-treatment while in the hands of the Uzbek authorities: In his submissions before the Court the applicant has not produced any details related to the alleged beatings. The applicant's hospitalisation between 7 and 16 June 2004 was necessitated by self-inflicted wounds and was not a result of police abuse. The medical expert examination report enclosed with his observations on the admissibility and merits of the application is not conclusive as to the date the injuries were inflicted and cannot in itself serve as

	evidence of ill-treatment. The Court is thus unable to conclude that the applicant's description of previous ill-treatment in 1994-2004 is very detailed or convincing. More importantly, in the course of extradition proceedings in Russia the applicant never referred to ill-treatment by Uzbek officials. In their appeals against the extradition order the applicant and his counsel merely cited the Court's case-law, which is clearly distinguishable from the applicant's personal situation and referred to the overall poor human rights situation in the receiving country, as described by international observers. He raised an issue of his experience of ill-treatment for the first time when complaining about refusal to grant him temporary asylum on 10 February 2010, that is when the extradition order had already become final. In such circumstances the Court is disinclined to find that the applicant has substantiated allegations of an individualised risk of ill-treatment in the requesting country. 2. As to article 5: The applicant's initial placement in custody was ordered, on 28 April 2009, by the district prosecutor's office on the basis of Article 61 of the Minsk Convention. The Court also notes that, although the decision of 28 April 2009 contained no reference to Article 466 § 2 of the CCP, the prosecutor's authority under domestic law to decide on the applicant's placement in custody without a Russian court order must have derived from that provision. The Court points out that neither Article 61 of the Minsk Convention nor Article 466 § 2 of the CCP stipulate any rules on procedure to be followed when choosing a preventive measure in respect of a person whose extradition is sought, or any time-limits for his or her detention pending extradition. By the time of the applicant's placement in custody the Russian Constitutional Court had already proclaimed that in extradition proceedings the right to liberty should be attended by the same guarantees as in other types of criminal proceedings. It unambiguously indicated that the application of preventive measures with a view to extradition should be governed not only by Article 466 but also by the norms on preventive measures contained in Chapter 13 of the CCP. Furthermore, the Government confirmed that the applicant's detention pending extradition had been governed by Chapter 13 of the CCP, among other provisions. In such circumstances the Court considers that, in order to be "lawful" within the meaning of Article 5 § 1 (f) of the Convention, the applicant's detention should be compatible not only with the requirements of Article 466 § 2 but also with the provisions governing application of a preventive measure in the form of placement in custody, namely Articles 108 and 109, which are included in Chapter 13 of the CCP. Article 108 § 4 of the CCP expressly provides that an issue of placement in custody is to be decided upon by a judge of a district or military court in the presence of the person concerned. It follows from the wording of Articles 5 § 48 and 31 § 2 of the CCP that a district court is a court authorised to act on the basis of the Russian Code of Criminal Procedure, which implies that the term "district court" refers to a court established and operating under Russian law. Accordingly, a judge of a district court is an official authorised to administer justice on the

	territory of the Russian Federation. Nothing in the wording of Article 108 § 4 of the CCP suggests that a foreign court may act as a substitute for a Russian district court when deciding on a person's placement in custody. Accordingly, the fact that the applicant's placement in custody was not authorised by a Russian court is clearly in breach of Article 108 § 4 of the CCP. Furthermore, even assuming that the applicant's initial placement in custody was compatible with domestic legal provisions, it would have ceased to be "lawful" after the lapse of the two-month period provided for by Article 109 § 1 of the CCP. Article 109 § 2 of the CCP unequivocally stipulates that the two-month term of custodial detention can be extended to six months only on the basis of a decision by a judge of a district court or a military court at an equivalent level. However, in the present case the Russian courts failed to extend the term of the applicant's detention after two months. The first judicial extension of the applicant's detention took place as late as 19 October 2009, when the St Petersburg City Court merely stated that the applicant should remain in custody for an unspecified period of time (see paragraph. In such circumstances the Court is bound to conclude that after 27 June 2009, that is, over two months after the date of his remand in custody, the applicant was detained in breach of domestic law. Therefore, the applicant's detention pending extradition cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention. The Court observes that it is not disputed between the parties that the applicant spent one year in detention pending extradition. It considers that new issues affecting the lawfulness of the detention might have arisen during that period and that, accordingly, by virtue of Article 5 § 4, he was entitled to apply to a "court" with jurisdiction to decide "speedily" whether or not his deprivation of liberty had become "unlawful" in the light of new factors which emerged after the decision on his initial placement in custody. The Court emphasises that it has already found on numerous occasions that the provisions of Articles 108 and 109 of the CCP did not allow those detained with a view to extradition to initiate proceedings for examination of the lawfulness of the detention in the absence of a request by a prosecutor for an extension of the custodial measure. In the present case the applicant's attempt to complain about the lack of judicial authorisation of his detention proved to be futile, as the district court expressly stated that "[t]he provisions of the CCP do not establish procedure for extension of the term of detention of persons in respect of which an extradition request has been received from a foreign State". This decision was subsequently quashed. However, the applicant could not obtain a final decision on the merits of his complaint, as the proceedings were discontinued on 8 December 2009. In the absence of any examples of domestic court practice furnished by the Government demonstrating that persons in situations similar to that of the applicant could rely on that decision to obtain judicial review of their detention, the Court is unable to conclude that the domestic law and practice at the material time enabled the applicant to effectively challenge the lawfulness of his detention pending extradition. In these circumstances

	the provisions of the domestic law did not secure the applicant's right to bring proceedings by which the lawfulness of his detention would be examined by a court. It follows that throughout the term of the applicant's detention pending extradition he did not have at his disposal any procedure for a judicial review of its lawfulness. 3. Given the irreversible nature of the harm that might occur if the alleged risk of torture or ill-treatment materialised and the importance which the Court attaches to Article 3, the notion of an effective remedy under Article 13 in the context of extradition and expulsion cases requires (i) independent and rigorous scrutiny of a claim that there exist substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the country of destination, and (ii) the provision of an effective possibility of suspending the enforcement of measures whose effects are potentially irreversible. In the present case, the applicant's appeal against the extradition order was examined by the Russian courts in two levels of jurisdiction. The judicial review proceedings constitute, in principle, an effective remedy within the meaning of Article 13 of the Convention in relation to complaints in the context of expulsion and extradition, provided that the courts can effectively review the legality of executive discretion on substantive and procedural grounds and quash decisions as appropriate. It is not disputed between the parties that the Russian courts have a power to quash an extradition order. It follows that the applicant has at his disposal a remedy with automatic suspensive effect. Since the applicant failed to refer to any individualised risks of ill-treatment in the requesting country in the course of these proceedings, it cannot be said that the Russian courts disregarded his arguments that there existed substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the requesting country thus depriving him of effective remedies in respect of the alleged violation of this provision. This part of the application is manifestly ill-founded and must be rejected.
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	*See the summary of the very similar case of Ben Khemais v. Italy.*

Translations: not available	
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	*Circumstances:* Expulsion of two Somali nationals from the UK to Somalia. The first applicant, Sufi, entered the United Kingdom clandestinely in 2003 using false travel documents. He claimed asylum on the ground that as a member of the Reer-Hamar, a sub-clan of the minority Ahansi clan, he had been subjected to persecution by Hawiye militia, who had killed his father and sister and seriously injured him. As a consequence, he had no surviving relatives in Somalia. Since he had remained in Somalia until 2003, he undermined his claim to be a member of a minority clan. Asylum status was refused. In 2005, 2006, 2007 and in 2009, he was convicted in

Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	the UK for a series of offences. The second applicant, Elmi, made an application for asylum in 1989 based on his father's position in the Somali army and the beginning of the civil war in Somalia. He was recognised as a refugee the same year and granted leave to remain until 31 October 1993. In 1994 he was granted Indefinite Leave to Remain in the United Kingdom. He was convicted for a series of offences in the UK in 1992, 1996, 2000, 2001 (twice), 2002 (twice) and in 2004. In 2006 a decision was made to issue a deportation order for his continued presence in the United Kingdom constituted a danger to the community. *Relevant complaints:* The applicants complained that their removal to Mogadishu would expose them to a real risk of being subjected to treatment in breach of Article 3 of the Convention and/or a violation of Article 2 of the Convention. *Court's conclusions:* Preliminary issues. Exhaustion of domestic remedies: Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time, namely, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Article 35 must also be applied to reflect the practical realities of the applicant's position in order to ensure the effective protection of the rights and freedoms guaranteed by the Convention. The Court has consistently held that mere doubts as to the prospects of success of national remedies do not absolve an applicant from the obligation to exhaust those remedies. Where an applicant is advised by counsel that an appeal offers no prospects of success, that appeal may not constitute an effective remedy. An applicant cannot be regarded as having failed to exhaust domestic remedies if he or she can show, by providing relevant domestic case-law or any other suitable evidence, that an available remedy which he or she has not used was bound to fail. In the present case, after the applicants' complaints were considered by the Asylum and Immigration Tribunal, the Tribunal considered a number of other complaints by applicants challenging their removal to Mogadishu. Prior to the Country Guidance decision of *AM & AM (Somalia)*, the Tribunal had consistently held that the situation in Mogadishu, and in Somalia generally, was not sufficiently grave to place anyone being returned at risk of serious harm and that members of majority clans could still look to their clan for protection. As the first applicant's claim to be a member of a minority clan had not been believed and the second applicant had accepted that he was a member of a majority clan, there was no reasonable prospect that the Secretary of State for the Home Department would have accepted any further submissions by the applicants as amounting to

	fresh claims for asylum prior to the decision in *AM & AM (armed conflict: risk categories) Somalia* CG [2008] UKAIT 00091. The Asylum and Immigration Tribunal found that the situation in Mogadishu had changed significantly and that it was no longer a safe place to live for the majority of its citizens. Nevertheless, it also found that it would be possible for persons from Mogadishu to relocate safely within Somalia. In view of this finding, the Court considers it likely that even if the applicants had made further representations following the decision in *AM & AM (Somalia)*, and even if the Secretary of State had considered those representations to amount to a fresh claim for asylum, such a claim would not have been successful as the applicants would have been considered to have had an internal flight alternative within Somalia. Article 3 and expulsion - Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. The right to political asylum is also not contained in either the Convention or its Protocols. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, - Article 3 implies an obligation not to deport the person in question to that country. As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victims conduct, the nature of the offence allegedly committed by the applicants is irrelevant for the purposes of article 3. Consequently, the conduct of the applicants, however undesirable or dangerous, cannot be taken into account. - The assessment whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention. These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case. Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection. - The assessment of the existence of a real risk must necessarily be a rigorous one. 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. Where such evidence is adduced, it is for the Government to dispel any doubts

	about it. - If the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court. A full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities. - The need to examine all the facts of the case, require that this assessment must focus on the foreseeable consequences of the removal of the applicant to the country of destination. This in turn must be considered in the light of the general situation there as well as the applicant's personal circumstances (*Vilvarajah*, § 108). - However, in *N.A. v. the United Kingdom* the Court expressly considered its earlier decision in *Vilvarajah* and concluded that it should not be interpreted so as to require an applicant to show the existence of special distinguishing features if he could otherwise show that the general situation of violence in the country of destination was of a sufficient level of intensity to create a real risk that any removal to that country would violate Article 3 of the Convention. To insist in such cases that the applicant show the existence of such special distinguishing features would render the protection offered by Article 3 illusory. Moreover, such a finding would call into question the absolute nature of Article 3, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Therefore, following *NA v. the United Kingdom*, the sole question for the Court to consider in an expulsion case is whether, in all the circumstances of the case before it, substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention. If the existence of such a risk is established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. However, it is clear that not every situation of general violence will give rise to such a risk. On the contrary, the Court has made it clear that a general situation of violence would only be of sufficient intensity to create such a risk "in the most extreme cases" where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return. Accordingly, in the present case the Court must examine whether substantial grounds have been shown for believing that the applicants, if deported, would face a real risk of being subjected to treatment contrary to Article 3. In doing so, it will first consider the general situation both in Mogadishu, which will be the point of their return, and in the remainder of southern and central Somalia before focusing on the foreseeable consequences of removal for each of the applicants. - However, before it can begin its assessment of risk on return, it must address two preliminary issues which

	have arisen in the present case: (1) the relationship between Article 3 of the Convention and article 15(c) of the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ('Qualification Directive'), and (2) the weight to be attached to country reports which primarily rely on information provided by anonymous sources. (1) Based on the European Court of Justice's interpretation in *Elgafaji* (preliminary ruling, requested by the Dutch State's Council – the ECJ held that the article 15(c) protection went beyond that of Article 3 of the Convention, which was covered by article 15(b) of the Qualification Directive.), the Court is not persuaded that Article 3 of the Convention, as interpreted in *NA*, does not offer comparable protection to that afforded under the Directive. In particular, it notes that the threshold set by both provisions may, in exceptional circumstances, be attained in consequence of a situation of general violence of such intensity that any person being returned to the region in question would be at risk simply on account of their presence there. (2) In assessing the weight to be attributed to country material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (*Saadi v. Italy* [GC], § 143, and *NA. v. the United Kingdom*, § 120).The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do. The Court appreciates the many difficulties faced by governments and NGOs gathering information in dangerous and volatile situations. It accepts that it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and, in such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on. The Court will not, therefore, disregard a report simply on account of the fact that its author did not visit the area in question and instead relied on information provided by sources. That being said, where a report is wholly reliant on information provided by sources, the authority and reputation of those sources and the extent of their presence in the relevant area will be relevant factors for the Court in assessing the weight to be attributed to their evidence. The Court recognises that where there are

	legitimate security concerns, sources may wish to remain anonymous. However, in the absence of any information about the nature of the sources' operations in the relevant area, it will be virtually impossible for the Court to assess their reliability. Consequently, the approach taken by the Court will depend on the consistency of the sources' conclusions with the remainder of the available information. Where the sources' conclusions are consistent with other country information, their evidence may be of corroborative weight. However, the Court will generally exercise caution when considering reports from anonymous sources which are inconsistent with the remainder of the information before it. In the present case the Court observes that the description of the sources relied on the UK Government Report of Fact-Finding Mission to Nairobi, 8–15 September 2010 is vague. As indicated by the applicants, the majority of sources have simply been described either as "an international NGO", "a diplomatic source", or "a security advisor". Such descriptions give no indication of the authority or reputation of the sources or of the extent of their presence in southern and central Somalia. This is of particular concern in the present case, where it is accepted that the presence of international NGOs and diplomatic missions in southern and central Somalia is limited. It is therefore impossible for the Court to carry out any assessment of the sources' reliability and, as a consequence, where their information is unsupported or contradictory, the Court is unable to attach substantial weight to it. The Court made an analysis of other reports on (i) The security situation in Mogadishu, (ii) Conditions in southern and central Somalia (outside Mogadishu) and concluded that the situation of general violence in Mogadishu is sufficiently intense to enable it to conclude that any returnee would be at real risk of Article 3 ill-treatment solely on account of his presence there, unless it could be demonstrated that he was sufficiently well connected to powerful actors in the city to enable him to obtain protection. There may be parts of southern and central Somalia where a returnee would not necessarily be at real risk of Article 3 ill-treatment solely on account of the situation of general violence. However, in the context of Somalia, the Court considers that this could only apply if the applicant had close family connections in the area concerned, where he could effectively seek refuge**.** If he has no such connections, or if those connections are in an area which he could not safely reach, the Court considers that there is a likelihood that he would have to have recourse to either an IDP or refugee camp. If the returnee's family connections are in a region which is under the control of al-Shabaab, or if it could not be accessed except through an al-Shabaab controlled area, the Court does not consider that he could relocate to this region without being exposed to a risk of ill-treatment unless it could be demonstrated that he had recent experience of living in Somalia and could therefore avoid coming to the attention of al-Shabaab. Where it is reasonably likely that a returnee would find himself in an IDP camp, such as those in the Afgooye Corridor, or in a refugee camp, such as the Dadaab camps in Kenya, the Court considers that there would be a real risk that he would be exposed to treatment in breach of Article 3 on account of the humanitarian

	conditions there. With respect to the first applicant, the evidence submitted does not suggest that he has family elsewhere in southern and central Somalia. Consequently, as he could not safely travel to Qoryoley, it is likely that he would find himself in an IDP settlement such as the Afgooye Corridor or in a refugee camp such as the Dadaab camps. The Court has already found that the conditions in these camps are sufficiently dire to reach the Article 3 threshold and it notes that the first applicant would be particularly vulnerable on account of his psychiatric illness. Regarding the second applicant: he would be at real risk of ill-treatment if he were to remain in the city of Mogadishu. Although it was accepted that he was a member of the majority Isaaq clan, the Court does not consider this to be evidence of sufficiently powerful connections which could protect him in Mogadishu. He has no close family connections in southern or central Somalia and, in any case, he arrived in the United Kingdom in 1988, when he was nineteen years old. He has therefore spent the last 22 years in the United Kingdom and, like the first applicant, he has no experience of living under al-Shabaab's repressive regime. Consequently, the Court considers that he would be at real risk of Article 3 ill-treatment were he to seek refuge in an area under al-Shabaab's control. Likewise, there would be a real risk he would be subjected to Article 3 ill-treatment if he were to seek refuge either in the Afgooye Corridor or in the Dadaab camps.
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	*Circumstances:* extradition of a Rwandan national from Sweden to Rwanda. The applicant is sought for the prosecution of genocide, murder, extermination and involvement with a criminal gang, allegedly committed during the genocide in Rwanda in 1994. The Swedish Government decided to extradite the applicant to Rwanda to be tried for genocide and crimes against humanity. It noted that the death penalty and life imprisonment in isolation had been abolished in 2007 and 2008 respectively. The prison conditions were acceptable, and Rwanda did not practice torture or other forms of ill-treatment. The Rwandan judicial system had improved over the last couple of years, including its witness protection programme and the possibility to interview witnesses living abroad. *Relevant complaints:* 1. The applicant complained that his extradition to Rwanda, to stand trial for charges of genocide, would violate Article 3 of the Convention. 2. The applicant complained that a trial in Rwanda would amount to a flagrant denial of justice. *Court's conclusions:* 1. - The applicant has invoked heart problems, stating that he needs to have bypass surgery in a few years. While it appears that he had bypass surgery some years ago, no medical certificates have been submitted which indicate that he has to undergo such surgery again. In any event, the threshold for a medical condition to raise

	an issue under Article 3 is, as shown by the case-law referred to above, a very high one. At this moment, the applicant's heart problems cannot be considered so serious as to raise an issue under that Article and there are no compelling humanitarian grounds against his extradition to Rwanda due to his medical condition. - The applicant has further claimed that he would risk persecution in Rwanda because of the fact that he is a Hutu. The Court notes that none of the decisions by the ICTR and national jurisdictions refusing transfer or extradition to Rwanda has been based, even in part, on such considerations. Nor has any evidence been submitted or found which gives reason to conclude that there is a general situation of persecution or ill-treatment of the Hutu population in Rwanda. Moreover, the applicant has not pointed to any particular personal circumstances which would indicate that he risks being subjected to treatment contrary to Article 3 due to his ethnicity. - The issue of the conditions of detention and imprisonment in Rwanda: the Court first notes that Rwanda's extradition request of 4 August 2008 and the letter of 12 August 2009 from the Rwandan Minister of Justice state that the applicant will be detained and serve a possible prison sentence at the Mpanga Prison and, temporarily during his trial before the High Court, at the Kigali Central Prison. As pointed out by the applicant, the Rwandan authorities would be able to place him in a different prison without the Swedish Government having any means to prevent it. However, given the provisions of the Transfer Law and the repeated assurances by the Rwandan authorities, the applicant's observation must be considered as no more than speculative. The respondent Government have submitted that the two mentioned detention facilities meet international standards. This assessment is shared by, for instance, the ICTR (see § 53 above), the Netherlands Government (§ 82) and the Oslo District Court (which took into account observations made by the Norwegian police following visits to the Mpanga Prison; § 72). The Court has regard also to the fact that the Special Court for Sierra Leone has sent several convicted persons to the Mpanga Prison to serve their sentences there. The Special Court must accordingly have found the conditions in the prison to be satisfactory. Moreover, there is no evidence in the case that the applicant would face a risk of torture or ill-treatment at the Mpanga Prison or the Kigali Central Prison. - The Court further notes that, pursuant to Article 3 of the Death Penalty Abolition Law, as amended in 2008, no persons transferred from other states under the Transfer Law may be sentenced to life imprisonment in isolation. - The Court is mindful of the fact that the ICTR Referral Chamber, in the *Uwinkindi* case, accorded certain weight to the regular prison visits to be conducted by the appointed monitors of ACHPR and to their immediate reporting should they discover any matter of concern. Although the Rwandan authorities have invited the Swedish Government to monitor the applicant's detention conditions, this mechanism or guarantee

	has not been formalised in the applicant's case and it is not clear whether the Swedish Government would actually monitor the applicant's situation in Rwanda. However, in the Court's opinion, the monitoring carried out by the ACHPR must be seen as merely an extra safeguard and the fact that the ICTR ordered such monitoring does not change its general finding that the detention conditions, as set out in the Transfer Law, were adequate.Thus, in the light of the material before it, the Court is not able to conclude that substantial grounds exist for believing that the applicant faces a real risk of treatment proscribed by Article 3. 2. The Court reiterates that, in 2008 and early 2009, the ICTR as well as courts and authorities of several national jurisdictions refused to transfer or extradite genocide suspects to Rwanda due to concerns that the suspects would not receive a fair trial in that country. The decisions mainly focused on the difficulties for the defence to adduce witness testimony, on account of the fears of witnesses to appear for fear of reprisals and the risk that remote defence testimony would not be given the same weight by the courts as evidence for the prosecution given in person. While the ICTR found no reason to criticize the impartiality and independence of the Rwandan judiciary or the composition of the courts, the UK High Court concluded that there was evidence of judicial interference by the Rwandan executive. Several decisions also found that the possibility of life imprisonment in isolation constituted an impediment to transferring the suspects to Rwanda. Since these decisions were taken, several amendments have been made to the Rwandan legislation. The respondent Government and the third-party intervener have submitted that there have been additional improvements in legal practice. Consequently, it needs to be determined whether these changes are sufficient to conclude that, if the applicant is now extradited to Rwanda, he would not be subjected to a real risk of a flagrant denial of justice. The central issue in the present case is the applicant's ability to adduce witnesses on his behalf and obtain an examination of testimony by the courts that reasonably respect the equality of arms vis-à-vis the prosecution. As regards the fears of reprisals that the applicant's witnesses may have, it is, as noted by the ICTR in *Uwinkindi*, not determinative whether those fears are reasonable or well-founded but rather whether there are objective reasons to believe that witnesses would refuse to come forward. In this respect, the Court first notes that, through a May 2009 amendment to Article 13 of the Transfer Law, witnesses – as well as other participants in the proceedings – are afforded immunity from prosecution for statements made or actions taken during a trial. Furthermore, in addition to the witness protection programme previously in existence under the auspices of the Office of the Prosecutor-General ("VWSU"), Rwanda has recently made arrangements for an additional witness protection unit under the direction of the judiciary ("WPU"). The Court also takes into account the submissions made by the Netherlands Government, according to which, during Dutch investigations of genocide cases in Rwanda, the Rwandan officials had never inquired about the witnesses or

	their statements. Similar assessments, recorded in the Oslo District Court's judgment of 11 July 2011, had been made by the Norwegian police after having interviewed 149 witnesses in Rwanda since September 2009. Furthermore, the introduction of Article 14 bis of the Transfer Law provides for the possibility of witnesses residing outside Rwanda to give testimony through the use of several alternative means, without having to appear in person at a trial. Besides the possibility of making depositions before a judge in Rwanda or abroad, the most important development is perhaps that the law now provides for the hearing of witnesses during the trial via video-link. Already in its first referral case, *Munyakazi*, the ICTR Appeals Chamber was satisfied that video-link facilities were available and would likely be authorised in cases where witnesses residing abroad genuinely feared to testify in person. In the present case, the respondent Government have submitted that there are no technical obstacles to the use of video-links in Rwanda. In this connection, the Court reiterates that it has previously held that the use of video-link testimony is as such in conformity with Article 6 (see, for instance, *Kabwe and Chungu v. the United Kingdom*). Furthermore, in view of the legislative changes providing for alternative ways of giving testimony, the Court cannot find any basis for concluding that statements thus made would be treated by the courts in a manner inconsistent with the respect for the equality of arms. In conclusion, the Court finds no reason to conclude that the applicant's ability to adduce witness testimony and have such evidence examined by the courts in Rwanda would be circumscribed in a manner inconsistent with the demands of Article 6. - The applicant has further claimed that there were no qualified lawyers able to defend him in Rwanda. The Court finds that this claim is unsubstantiated. It appears that the applicant would be free to appoint foreign defence counsel. More importantly, reference is made to the decision in the *Uwinkindi* case, where the Referral Chamber noted, *inter alia*, that many members of the Rwandan Bar had more than five years' experience, that Rwandan lawyers were obliged to provide *pro bono* services to indigent persons and that there was a legal framework as well as a budgetary provision for legal aid. - Turning to the independence and impartiality of the Rwandan judiciary, the Court takes note of the concerns expressed by some international organisations as well as the UK High Court. However, in its referral cases, the ICTR has concluded that the Rwandan judiciary meets these requirements. In *Uwinkindi*, the Referral Chamber considered that the judges of the High Court and the Supreme Court were qualified and experienced and in possession of the necessary skills to handle a transferred case. Furthermore, both the ICTR and the respondent Government have pointed to the legal and constitutional guarantees of the judiciary's independence and impartiality. The experience of the Dutch investigative teams and the Norwegian police – that Rwandan authorities had not in any way interfered with their work or with the witnesses they heard – points in the same direction. The Court therefore concludes that there is no sufficient indication that the Rwandan judiciary lacks

	the requisite independence and impartiality. - As to the applicant's personal situation, the Court finds that it has not been substantiated that his trial would be conducted unfairly because of his having given testimony for the defence in trials before the ICTR or because of his former position as head of the Rwandan Civil Aviation Authority. Furthermore, in regard to the decisions allegedly taken by *gacaca* courts in 2008, the Court first notes that they were invoked only in August 2010, more than two years after their date of issuance and more than a year after the introduction of the present application. Even assuming that they are genuine, the Court notes that they relate to damages that the applicant had been ordered to pay as compensation for having destroyed and looted property. It has not been shown that there is a connection between the acts for which he was ordered to pay damages and the acts covered by the charges in Rwanda's extradition request. Moreover, according to the provisions of the Transfer Law and the statements made by the Rwandan authorities in connection with the extradition request, extradited genocide suspects – including the applicant – will have their criminal liability tried by the High Court and the Supreme Court and not by the *gacaca* courts. The Court has in the foregoing referred to the ICTR Referral Chamber's decision in *Uwinkindi*. While noting that the decision is not final, the Court nevertheless considers that its conclusions have to be given considerable weight. It is the first transfer decision taken by the ICTR since the legislative changes in Rwanda. The Chamber found that the issues that had led to the decisions in 2008 to refuse transfers had been addressed to such a degree in the intervening period that the Chamber was confident that the accused would be prosecuted in a manner consistent with internationally recognised fair trial standards enshrined in the ICTR Statute and other human rights instruments. While the Chamber also relied on the monitoring it ordered and its ability to revoke the transferred case if necessary, this does not, as noted above in regard to the complaint under Article 3, change the conclusions drawn. In this connection, the Court notes that Sweden has declared itself prepared to monitor the proceedings in Rwanda and the applicant's detention. It must also be emphasised that the decision to transfer *Uwinkindi* for trial in Rwanda was made pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the ICTR which, among other things, stipulate that the referring chamber must be satisfied that the person in question will receive a fair trial in the courts of Rwanda. The standard thus established clearly set a higher threshold for transfers than the test for extraditions under Article 6 of the Convention, as interpreted by the Court. In conclusion, having regard to the above considerations, the applicant, if extradited to stand trial in Rwanda, would not face a real risk of a flagrant denial of justice.
Mokallal v. Ukraine No.: 19246/10 Type: Judgment	*Circumstances:* Extradition of an Iranian national from Ukraine to Iran. The applicant applied for refugee status during the extradition proceedings. *Relevant complaints:* The applicant complained that his detention was not lawful, because there was no

Date: 10 November 2011 Articles: Y: 5§1; N: 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	legislation governing detention with a view to extradition, and because the law should not have permitted his extradition while his application for refugee status was pending. *Court's conclusions*: Article 5 § 1 (f) of the Convention is applicable in the instant case since the applicant was detained for the purpose of his extradition. This provision does not require the detention of a person against whom action is being taken with a view to extradition to be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition" (see Čonka, § 38 and Chahal, § 112). However, any deprivation of liberty under Article 5 § 1 (f) will be justified only for as long as extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f). It falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness. Thus, the notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from, and be executed by, an appropriate authority and should not be arbitrary. The words "in accordance with a procedure prescribed by law" do not merely refer back to domestic law; they also relate to the quality of this law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness. The Court has previously found a violation of Article 5 § 1 of the Convention in cases concerning the detention pending extradition proceedings in Ukraine within the legal framework that existed prior to 17 June 2010. These findings were primarily based on the lack of a sufficient legal basis for such detention. - The lawfulness of the applicant's detention between 17 and 29 June 2010: On 17 June 2010 the Code of Criminal Procedure was amended to provide a legal basis for extradition proceedings; however, the parties did not comment on its relevance to the present part of the application and these legislative changes did not affect the applicant during the period in question, as he continued to be detained under the court decision given on 6 April 2010, that is, prior to the Amendment Act of 17 June 2010. In the absence of any transitional

	arrangements in the above Act and also in the absence of a legal basis for detention pending extradition proceedings at the time that detention was ordered by the domestic court, the Court considers that the applicant was deprived of his liberty in violation of Article 5 § 1 of the Convention also during this period. - The lawfulness of the applicant's detention between 29 June and 12 July 2010: On 29 June 2010 the domestic court reviewed the applicant's detention and authorised his further detention pending the examination of the request for his extradition to Iran under the new procedure established by the Amendment Act of 17 June 2010. The new legislation provides a regulatory framework for extradition proceeding in which the deprivation of liberty with a view to extradition is envisaged and the persons detained therefore are entitled to judicial review of the lawfulness of their arrest and detention. The applicant makes no specific complaints about particular matters arising in this context, but it cannot be said that the extradition proceedings from 29 June to 12 July lacked any legal basis. As to the applicant's argument that his detention served no purpose, as he could not be extradited prior to examination of his application for refugee status, the Court notes that it has consistently held that the existence of circumstances that under domestic law exclude extradition of a person render any detention for the purpose of extradition unlawful and arbitrary. The Ukrainian legislation establishes a total ban on extradition or expulsion of Ukrainian nationals. In addition to this, under the Refugee Act refugees may not be expelled or forcibly returned to particular countries. The Court has previously found a violation of Article 5 § 1 of the Convention when the authorities applied detention for the purpose of extradition to a Ukrainian national and to a refugee. In the former case, however, extradition had been excluded from the outset due to the applicant's nationality, while in the latter it became arbitrary from the moment the decision on granting the applicant refugee status became final and binding. In contrast with the cases mentioned, in the instant case no decision on granting the applicant refugee status had been taken either prior to or during his detention. The ongoing examination of the applicant's request for refugee status did not exclude the possibility that he might later be extradited. The Court notes that the examination of any risks and objections linked to the person's possible removal from the territory of the State is intrinsic to actions "taken with a view to deportation or extradition". Even if such an examination establishes that such risks and objections are well-founded and capable of preventing the person's removal, such a possible future outcome cannot in itself retroactively affect the lawfulness of the detention pending examination of a request for extradition. All that is required under 5 § 1 (f) is that "action is being taken with a view to deportation or extradition". Given that throughout this period of detention it was the authorities' intention to extradite the applicant, and that there was no legal or factual impediment to ultimate extradition, the detention cannot be considered unlawful or arbitrary within the meaning of Article 5 § 1. It follows that

	there was no violation of the above provision during the period in question. - The lawfulness of the applicant's detention between 12 and 14 July 2010: On 12 July 2010 the Iranian Embassy in Kyiv informed the General Prosecutor's Office that the applicant's extradition was no longer required. It was not until 14 July 2010 however that the Deputy Prosecutor of the Odessa Region authorised the applicant's release. The Court reiterates that some delay in implementing a decision to release a detainee is understandable, and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep this to a minimum. Administrative formalities connected with release cannot justify a delay of more than a few hours. It is for the Contracting States to organise their legal system in such a way that their law-enforcement authorities can meet the obligation to avoid unjustified deprivation of liberty. In the present case it took the domestic authorities two days to arrange for the applicant's release after they had received notification that the applicant's extradition was no longer required. Having regard to the prominent place which the right to liberty holds in a democratic society, the respondent State should have deployed all modern means of communication of information to keep to a minimum the delay in implementing the decision to release the applicant, as required by the relevant case-law. The Court is not satisfied that the Ukraine officials complied with that requirement in the present case. It follows that there has been a violation of Article 5 § 1 in respect of this period of his detention.
Al Hanchi v. Bosnia and Herzegovina No.: 48205/09 Type: Judgment Date: 15 November 2011 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion of a Tunisian national from Bosnia-Herzegovina to Tunisia for national security reasons. The appliquant had joined the foreign mujahedin during the 1992-95 war in Former Yugoslavia. *Relevant complaints:* The applicant alleged that his deportation to Tunisia would expose him to the risk of treatment contrary to Article 3. *Court's conclusions:* The applicant claimed that he would be treated in Tunisia as an Islamist and a suspected terrorist because of his association with the foreign mujahedin in Bosnia and Herzegovina, the fact that he had been declared a threat to national security in Bosnia and Herzegovina and his long beard. He submitted that Islamists and suspected terrorists were, as a group, systematically exposed to serious violations of fundamental human rights, including ill-treatment, in Tunisia. He relied on reports of the United States Department of State, Human Rights Watch and Amnesty International on Tunisia. As noted by the Parliamentary Assembly of the Council of Europe and UN Special Rapporteurs, the process of democratic transition in Tunisia is in progress and steps have already been taken to dismantle the oppressive structures of the former regime and put in place elements of a democratic system: notably, security forces widely accused of human-rights abuses during the former regime, including the State Security Service, were dissolved; an amnesty was granted to all political prisoners, including those who had been held under the controversial anti-terrorism law; and a number of high-

	and mid-ranking officials from the Ministry of Interior and the Ministry of Justice were dismissed and/or prosecuted for past abuses. While it is true that cases of ill-treatment are still reported, those are sporadic incidents; there is no indication, let alone proof, that Islamists, as a group, have been systematically targeted after the change of regime. On the contrary, all the main media have reported that Mr Rachid Ghannouchi, a leader of the principal Tunisian Islamist movement (Ennahda), was able to return to Tunisia after twenty or so years in exile and that on 1 March 2011 the movement in question was allowed to register as a political party. It should also be emphasised that on 29 June 2011 Tunisia acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, setting up a preventive system of regular visits to places of detention, as well as to the Optional Protocol to the International Covenant on Civil and Political Rights, recognising the competence of the Human Rights Committee to consider individual cases. This shows the determination of the Tunisian authorities to once and for all eradicate the culture of violence and impunity which prevailed during the former regime. There is thus no real risk that the applicant, if deported to Tunisia, would be subjected to ill-treatment.
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	*Circumstances:* Expulsion of a Pakistani national from the UK to Pakistan. The applicant's mother and siblings are UK nationals. *Relevant complaints:* The applicant claims that His expulsion (deportation) to Pakistan would violate his right to a family life, given the presence and nationality of his family in the UK as well as the ill health of his mother. The applicant further claimed to have a relationship with a British national. *Court's conclusions:* The applicant had a long history of offences. The offence which led to the applicant's deportation was of a very considerable seriousness. The applicant's conduct since the commission of the offence which gave rise to the deportation proceedings against him, specifically the fact that he was convicted of a further driving offence in 2006. The Court is of the view that the applicant's lapse into re-offending, so soon after his release from prison, demonstrates that his conviction and lengthy term of imprisonment did not have the desired rehabilitative effect and that the domestic authorities were entitled to conclude that he continued to present a risk to the public. The applicant's conduct subsequent to the deportation offence renders all the more compelling the Government's reasons for deporting him. - As to the applicant's circumstances in the United Kingdom, with a view to determining whether his family and private life, and his consequent level of integration into British society, were such as to outweigh the seriousness of his criminal history. Unlike the applicant, his mother and siblings are all now naturalised British citizens. The applicant's six children are also British citizens, as are their mothers. Finally, the applicant claimed to be in a relationship with a British citizen. The Court notes that, although this relationship apparently began in 2008, the applicant made no mention of this partner at his appeal hearing in 2009, when both of the

	mothers of his children were referred to as his current partners. The applicant appears to have mentioned his new partner for the first time in representations to the Secretary of State in November 2009, only a few months before he was deported. The applicant has not stated whether the relationship has still subsisted since his deportation. The Court cannot therefore attach much weight to this relationship, or find that it is a relationship akin to marriage. - As regards the applicant's relationship with his children and their mothers, the Court notes that, as predicted by the Tribunal, neither woman chose to accompany the applicant to Pakistan and both remain in the United Kingdom with their children. The extent of the applicant's relationship with his children and their mothers was limited even at the time of his deportation, given that he had not lived with them since 1999 or seen the children since 2000. The applicant had not seen his children in the ten years prior to his deportation and the eldest child would only have been aged four the last time he or she had seen his or her father. There was also some doubt as to whether the applicant fulfilled a positive role in his children's lives, given that four of the six had, at various times, been on the social services' "at risk" register. Given the length of time since the applicant last had face-to-face contact with his children, as a result of his offending and consequent imprisonment, and the lack of evidence as to the existence of a positive relationship between the applicant and his children, the Court takes the view that the applicant has not established that his children's best interests were adversely affected by his deportation. - As to the respective solidity of the applicant's ties to the United Kingdom and to Pakistan. Unlike his younger brother, the applicant returned to Pakistan for visits following his arrival in the United Kingdom and also married there. In the absence of any evidence to the contrary, the Court assumes that this marriage is still, legally at least, subsisting. The applicant therefore maintained some level of connection to his country of origin and was not deported as a stranger to the country. As regards his ties to the United Kingdom, the Court has addressed the question of his family life, both with his parents and siblings and with his various partners and children, and found it to be limited in its extent. Furthermore, the applicant's private life in the United Kingdom, as observed by the Tribunal, has been constrained by his convictions and spells in prison. Whilst he was mainly educated in the United Kingdom and has worked, he does not appear to have established a lengthy or consistent employment history. In short, and despite the length of his stay, the applicant did not achieve a significant level of integration into British society. As a settled migrant who spent much of his childhood in the United Kingdom, serious reasons would be required to render the applicant's deportation proportionate. However, having regard to his substantial offending history, including offences of violence and recidivism following the commencement of deportation proceedings against him, the Court is of the view that such serious reasons are present in the applicant's case. His private and family life in the United Kingdom were not

	such as to outweigh the risk he presented of future offending and harm to the public and his deportation was therefore proportionate to the legitimate aim of preventing crime. As such, the applicant's deportation to Pakistan did not amount to a violation of Article 8.
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	*Circumstances:* Expulsion of an Afghan national from the United Kingdom to Afghanistan after having been denied asylum. The applicant's father was politically active in the Communist People's Democratic Party of Afghanistan (PDPA), while his older brother obtained asylum in the UK, based on the risk to him as the son of a high-ranking member of the PDPA. *Relevant complaint:* The applicant complained that his removal to Afghanistan would violate his rights under Articles 2 and 3 of the Convention. *Court's conclusions*: Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country. The assessment whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention. These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case. Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection. The assessment of the existence of a real risk must necessarily be a rigorous one. 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. The Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies. In order to determine whether there is a real risk of ill-treatment in this case, the Court must examine the foreseeable consequences of sending the applicant to Afghanistan,

	bearing in mind the general situation there and his personal circumstances. If an applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court. A full and *ex nunc* assessment is called for as the situation in a country of destination may change over the course of time. Even though the historical position is of interest insofar as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light since the final decision taken by the domestic authorities. The Court has held that 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 and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence. The Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return. The applicant alleged that he would be at risk of ill-treatment in Afghanistan due to his father's involvement with the PDPA Government until its overthrow in 1992 and his father's claimed continued high profile in Afghanistan. The Court notes that the applicant has never claimed to have had any personal political involvement in Afghanistan, nor has he claimed that he has an individual profile there unconnected to his relationship with his father. Furthermore, the applicant has not claimed that he has ever had any role in, or knowledge of, his father's political activities. The applicant has failed to adduce evidence capable of demonstrating that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 if removed to Afghanistan having particular regard to, *inter alia,* the lack of any evidence that the applicant's father still has any profile in Afghanistan; the length of time that has elapsed since his father, in any event, had left Afghanistan; the applicant's lack of individual profile in Afghanistan; and, critically, the absence of any recent evidence to indicate that family members of PDPA members would be at risk in Afghanistan in the present circumstances prevailing there.
Yoh-Ekale Mwanje **v. Belgium** No.: 10486/10 Type: Judgment Date: 20 December 2011 Articles: Y: 3, 5§1(f), 13; N: 3	*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

Keywords: – custody (lawfulness) – expulsion – ill-treatment – interim measure Links: French only Translations: not available	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	*Circumstances:* Extradition of a Latvian national from the United States to Latvia for aggravated murder. Zandbergs was subsequently prosecuted for intentional destruction of property, illegal possession of a gas pistol and contraband. These charges were dropped after the surrender. *Relevant complaints:* *1. The applicant contested* the lawfulness of his detention on remand, alleging that the consent from the United States to prosecute him had not been properly obtained. 2. The applicant alleges two violations of Article 6 § 1 of the Convention. First, he alleges that his right to a fair trial was breached in that the Latvian authorities did not properly obtain a consent from the United States authorities to put him on trial for murder. Second, he complains about the length of proceedings that, according to him, were unreasonably long. *Court's conclusions:* 1. The applicant's pre-trial detention, for the purpose of Article 5 § 3, lasted from 20 December 1999, when he was surrendered to the Latvian authorities, brought to Riga and placed in prison, until 4 April 2003, when he was found guilty and sentenced by the Riga Regional Court. Therefore, the applicant spent 3 years, 3 months and 15 days in detention on remand. The Court considers such a length to be, in itself, sufficient to raise a serious issue under Article 5 § 3 of the Convention. in a number of Latvian cases that concerned the corresponding period of time it found a violation of Article 5 § 3 of the Convention because of the extremely basic and summary motivation of court orders and decisions extending the applicant's pre-trial detention. Moreover "these cases as well as the fact that there are dozens of similar applications pending before the Court seems to disclose a systemic problem in relation to the apparently indiscriminate application of detention as a preventive measure in Latvia". In the present case the Court points out the extremely short and uniform motivation of all the court orders and decisions extending the applicant's pre-trial detention or rejecting his appeals against these extensions. In fact, exactly like in most of those cases, the Latvian courts have simply recounted the grounds for detention provided by law, and did not provide detailed explanation as to how those grounds were relevant to the applicant's individual case. However, in the specific circumstances of the case, particular weight could be legitimately given to the fact that the applicant had already absconded from justice and tried to hide abroad. Therefore the Court does not exclude that this fact, together with the seriousness of the alleged crime and the fact that the applicant had no fixed residence in Latvia, could provide a valid ground for keeping him in detention. On the other hand, even such special circumstances did not exonerate the State authorities from their obligation of diligence in trying the applicant within a reasonable time, as Article 5 § 3 provides. In the present case, in order to comply with this provision, the Latvian authorities should

	have provided some additional compelling reasons justifying the applicant's detention for such a long period of time. This was not done; on the contrary, over three years and three months, the courts continued to simply recount the grounds for detention as they are provided by law. This was certainly not sufficient for the purposes of Article 5 § 3. As was already found on previous occasions, the system of appeals that existed in the Latvian legal system at the material time was, as such, manifestly insufficient to satisfy the requirements of Article 5 § 4. 2. On 17 December 1999 the acting Secretary of State of the United States issued a written document approving the applicant's deportation to Latvia on the charge of aggravated murder. On 14 February and on 4 May 2000 respectively, the Latvian authorities decided to drop the charges against the applicant regarding intentional destruction of property, illegal possession of a gas pistol and contraband, because there was no consent from the authorities of the extraditing State (i.e., the United States) to try him for these offenses. As to the murder charges, the Court points out that on 17 December 1999 the acting Secretary of State of the United States expressly approved the applicant's deportation to Latvia on the charge of aggravated murder. The Court observes that all three levels of Latvian jurisdiction examined this issue and found this approval to be sufficient to put the applicant on trial. The Court itself does not find this conclusion unreasonable; in this respect, it reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of national legislation. This complaint is manifestly ill-founded and must be rejected. In assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. In the present case the proceedings started on 23 November 1993, when the applicant was arrested as a suspect of murder. This means that on the date of 27 June 1997, the proceedings have already lasted three years and seven months. However, in the particular circumstances of this case, the Court considers that it must take into account the fact that in July 1994 the applicant broke the terms of the preventive measure applied to him and fled abroad. Subsequently, until his extradition on 20 December 1999 he was outside Latvia's jurisdiction. The decision of the applicant to abscond and the extradition proceedings in the United States cannot be imputed to Latvian authorities. Therefore, taking into account the particular circumstances of the present case, the Court considers that the period in respect of which it should examine the compliance with the reasonable time requirement started on 20 December 1999 and ended on 3 September 2004, when the Senate of the Supreme Court declared his cassation appeal inadmissible for lack of arguable points of law. It thus lasted slightly more than four years and eight months for pre-trial investigation and three levels of jurisdiction. the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities. Taking into account all the relevant factual and legal elements of the present case,

	namely the complexity of the case, the applicant's conduct and the overall speed with which the authorities handled the case after the applicant's return, the Court considers that the reasonable time requirement has not been breached.
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 – extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: not available	*Circumstances*: The United States sought the extradition of Phillip Harkins for his prosecution of a murder he allegedly committed in the State of Florida in 1999. The extradition of Joshua Daniel Edwards was sought for his prosecution for the murder, the attempted murder of a second victim and the assault of a third person, he allegedly committed in the State of Maryland in 2006. *Relevant Complaints*: The applicants alleged that, if extradited from the United Kingdom, they would be at risk of the death penalty or of sentences of life imprisonment without parole, which were incompatible with Article 3 of the Convention. *Court's Conclusions*: 1. The risk of the death penalty: The Court relied upon the original affidavit in support of the extradition request and further assurances provide by the US contained in Diplomatic Notes that the death penalty would not be sought or, if imposed would not be executed. In the case of Edwards, the maximum penalty that could be imposed is a life sentence. The Court recalls its finding in Babar *Ahmad and others v. the United Kingdom*, § 105, 6 July 2010 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. In *Ahmad and others*, the Court also recognised that, in international relations, Diplomatic Notes carry a presumption of good faith and that, in extradition cases, it was 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. The Court also recalls the particular importance it has previously attached to prosecutorial assurances in respect of the death penalty. The Courts rejects these complaints as manifestly ill founded. 3. The risk of sentence of life imprisonment without parole: Treatment which might violate Article 3 because of an act or omission of a Contracting State might not

	attain the minimum level of severity which is required for there to be a violation of Article 3 in an expulsion or extradition case. The Court has been very cautious in finding that removal from the territory of a Contracting State would be contrary to Article 3 of the Convention. It has only rarely reached such a conclusion since adopting the *Chahal* judgment (see *Saadi*, cited above § 142). The Court would further add that, save for cases involving the death penalty, it has even more rarely found that there would be a violation of Article 3 if an applicant were to be removed to a State which had a long history of respect for democracy, human rights and the rule of law. In a sufficiently exceptional case, an extradition would be in violation of Article 3 if the applicant faced a grossly disproportionate sentence in the receiving State. In principle, matters of appropriate sentencing largely fall outside the scope of Convention (*Léger*, § 72), a grossly disproportionate sentence could amount to ill-treatment contrary to Article 3 at the moment of its imposition. However, the Court also considers that "gross disproportionality" is a strict test. In a removal case, a violation would arise if the applicant were able to demonstrate that he or she was at a real risk of receiving a grossly disproportionate sentence in the receiving State. However the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States. Due regard must be had for the fact that sentencing practices vary greatly between States and that there will often be legitimate and reasonable differences between States as to the length of sentences which are imposed, even for similar offences. The Court therefore considers that it will only be in very exceptional cases that an applicant will be able to demonstrate that the sentence he or she would face in a non-Contracting State would be grossly disproportionate and thus contrary to Article 3. Subject to the general requirement that a sentence should not be grossly disproportionate, for life sentences it is necessary to distinguish between three types of sentence: (i) a life sentence with eligibility for release after a minimum period has been served; (ii) a discretionary sentence of life imprisonment without the possibility of parole; and (iii) a mandatory sentence of life imprisonment without the possibility of parole. - The first sentence is clearly reducible and no issue can therefore arise under Article 3. - For the second, a discretionary sentence of life imprisonment without the possibility of parole, the Court observes that normally such sentences are imposed for offences of the utmost severity, such as murder or manslaughter. In any legal system, such offences, if they do not attract a life sentence, will normally attract a substantial sentence of imprisonment, perhaps of several decades. Therefore, any defendant who is convicted of such an offence must expect to serve a significant number of years in prison before he can realistically have any hope of release, irrespective of whether he is given a life

	sentence or a determinate sentence. It follows, therefore, that, if a discretionary life sentence is imposed by a court after due consideration of all relevant mitigating and aggravating factors, an Article 3 issue cannot arise at the moment when it is imposed. Instead, an Article 3 issue will only arise when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds (such as punishment, deterrence, public protection or rehabilitation); and (ii) as the Grand Chamber stated in *Kafkaris*, cited above, the sentence is irreducible *de facto* and *de iure*. - For the third sentence, a mandatory sentence of life imprisonment without the possibility of parole, the Court considers that greater scrutiny is required. The vice of any mandatory sentence is that it deprives the defendant of any possibility to put any mitigating factors or special circumstances before the sentencing court. This is especially true in the case of a mandatory sentence of life imprisonment without the possibility of parole, a sentence which, in effect, condemns a defendant to spend the rest of his days in prison, irrespective of his level of culpability and irrespective of whether the sentencing court considers the sentence to be justified. However, in the Court's view, these considerations do not mean that a mandatory sentence of life imprisonment without the possibility of parole is *per se* incompatible with the Convention. Instead, these considerations mean that such a sentence is much more likely to be grossly disproportionate than any of the other types of life sentence, especially if it requires the sentencing court to disregard mitigating factors which are generally understood as indicating a significantly lower level of culpability on the part of the defendant, such as youth or severe mental health problems. The Court concludes therefore that, in the absence of any such gross disproportionality, an Article 3 issue will arise for a mandatory sentence of life imprisonment without the possibility of parole in the same way as for a discretionary life sentence, that is when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds; and (ii) that the sentence is irreducible *de facto* and *de iure* (*Kafkaris*, cited above). The applicants have not yet been convicted, still less began serving their sentences. The Court therefore considers that they have not shown that, upon extradition, the incarceration in the United States would not serve any legitimate penological purpose. If they are convicted and given a mandatory life sentence, it may well be that, the point at which his continued incarceration would no longer serve any purpose may never arise. It is still less certain that, if that point were ever reached, the Governor of Florida and the Board of Executive Clemency would refuse to avail themselves of their power to commute the first applicant's sentence. The second applicant has not shown that incarceration in the United States would not serve any legitimate penological purpose, still less that, should that moment arrive, the Governor of Maryland

	would refuse to avail himself of the mechanisms which are available to him to reduce a sentence of life imprisonment without parole (commutation and eventual release on parole). The Court found unanimously that there would be no violation of art. 3. Remark: The judgment became final on 9 July 2012. The Panel decided not to refer the matter to the Grand Court.
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	*Circumstances:* Expulsion of a Jordanian national from the UK to Jordan. The appliquant is is under worldwide embargo by the United Nations Security Council Committee 1267 for his alleged affiliation with al-Qaeda. He was convicted twice in absentiae in Jordan. In April 1999, for his role in the "reform and challenge" case, involving an allegation of a conspiracy to carry out bomb attacks on the American School and the Jerusalem Hotel in Amman in 1998. The Jordanian authorities requested the applicant's extradition from the United Kingdom. In early 2000, the request was withdrawn by Jordan. In the autumn of 2000 the applicant was again tried *in absentia* in Jordan, this time in a case known as the "millennium conspiracy", which concerned a conspiracy to cause explosions at western and Israeli targets in Jordan to coincide with the millennium celebrations. The conspiracy was uncovered before the attacks could be carried out. The applicant was alleged to have provided money for a computer and encouragement through his writings, which had been found at the house of a co-defendant. *Relevant complaints:* 1. The applicant complained that he would be at real risk of being subjected to torture or ill-treatment if deported to Jordan. 2. The applicant complained that it was incompatible with Article 3 taken in conjunction with Article 13 of the Convention for SIAC, in order to establish the effectiveness of the assurances given by Jordan, to rely upon material which was not disclosed to him. 3. The applicant complained first, that, if deported, he would be at real risk of a flagrant denial of his right to liberty as guaranteed by that Article due to the possibility under Jordanian law of incommunicado detention for up to 50 days. Second, also under Article 5, he alleged that he would be denied legal assistance during any such detention. Finally, he alleged that, if convicted at his re-trial, any sentence of imprisonment would be a flagrant breach of Article 5 as it would have been imposed as a result of a flagrant breach of Article 6. 4. The applicant complained he would be at real risk of a flagrant denial of justice if retried in Jordan for either of the offences for which he has been convicted *in absentia*. *Court's conclusions:* 1. Reports of United Nations bodies and NGOs regarding torture in Jordanian prisons are consistent and disturbing. Torture remains "widespread and routine". Reports demonstrate beyond any reasonable doubt that

	torture is perpetrated systematically by the General Intelligence Directorate, particularly against Islamist detainees. Torture is also practiced by the GID with impunity. The evidence shows that the Jordanian criminal justice system lacks many of the standard, internationally recognised safeguards to prevent torture and punish its perpetrators. There is an absence of a genuinely independent complaints mechanism, a low number of prosecutions, and the denial of prompt access to lawyers and independent medical examinations. The conclusions of the Committee Against Torture, corroborated by NGO reports, show that these problems are made worse by the GID's wide powers of detention and that, in state security cases, the proximity of the Public Prosecutor to the GID means the former provides no meaningful control over the latter. The Special Rapporteur, Amnesty International and the NCHR confirm, there is an absence of co-operation by the GID with eminent national and international monitors. As a result of this evidence it is unremarkable that the parties accept that, without assurances from the Jordanian Government, there would be a real risk of ill-treatment of the present applicant if he were returned to Jordan. As a high profile Islamist, the applicant is part of a category of prisoners who are frequently ill-treated in Jordan. It is also of some relevance that he claims to have previously been tortured in Jordan. However, consistent with the general approach the Court has set out at paragraphs 187–189 above, the Court must also consider whether the assurances contained in the MOU, accompanied by monitoring by Adaleh, remove any real risk of ill-treatment of the applicant. In considering that issue, the Court observes that the applicant has advanced a number of general and specific concerns as to whether the assurances given by Jordan are sufficient to remove any real risk of ill-treatment of him. At the general level, he submits that, if Jordan cannot be relied on to abide by its legally binding, multilateral international obligations not to torture, it cannot be relied on to comply with non-binding bilateral assurances not to do so. He has also argued that assurances should never be relied on where there is a systematic problem of torture and ill-treatment and further argues that, even where there is evidence of isolated, non-systemic acts of torture, reliance should only be placed on assurances where those are supported by the independent monitoring of a body with a demonstrable track-record of effectiveness in practice. The Court does not consider that these general submissions are supported by its case-law on assurances. As the general principles set out at paragraphs 187-189 above indicate, the Court has never laid down an absolute rule that a State which does not comply with multilateral obligations cannot be relied on to comply with bilateral assurances. The extent to which a State has failed to comply with its multilateral obligations is, at most, a factor in determining whether its bilateral assurances are sufficient. Equally, there is no prohibition on seeking assurances when there is a systematic problem of torture and ill-treatment in the receiving State; otherwise it would be paradoxical if the very fact of having to seek assurances meant one could not rely on them. Moreover, the Court does not consider that the general human rights situation in Jordan excludes accepting any assurances

	whatsoever from the Jordanian Government. Instead, the Court considers the United Kingdom and Jordanian Governments have made genuine efforts to obtain and provide transparent and detailed assurances to ensure that the applicant will not be ill-treated upon return to Jordan. The MOU would also appear to be superior to any assurances examined by the United Nations Committee Against Torture and the United Nations Human Rights Committee. The MOU is specific and comprehensive. It addresses directly the protection of the applicant's Convention rights in Jordan. The MOU is also unique in that it has withstood the extensive examination that has been carried out by an independent tribunal, SIAC, which had the benefit of receiving evidence adduced by both parties, including expert witnesses who were subject to extensive cross-examination. The Court also agrees with SIAC's general assessment that the assurances must be viewed in the context in which they have been given. The Court considers that there is sufficient evidence for it to conclude that the assurances were given in good faith by a Government whose bilateral relations with the United Kingdom have, historically, been very strong. Moreover, they have been approved at the highest levels of the Jordanian Government, having the express approval and support of the King himself. Thus, it is clear that, whatever the status of the MOU in Jordanian law, the assurances have been given by officials who are capable of binding the Jordanian State. Just as importantly, the assurances have the approval and support of senior officials of the GID. In the Court's view, all of these factors make strict compliance with both the letter and spirit of the MOU more likely. Similarly, although the applicant has argued that his high profile would place him at greater risk, the Court is unable to accept this argument, given the wider political context in which the MOU has been negotiated. It considers it more likely that the applicant's high profile will make the Jordanian authorities careful to ensure he is properly treated. the Jordanian Government is no doubt aware that not only would ill-treatment have serious consequences for its bilateral relationship with the United Kingdom, it would also cause international outrage. Six specific areas of concern as to the meaning and operation of the assurances: (i) what was meant by "judge" in respect of the guarantee that he would be "brought promptly before a judge"; (ii) whether he would have access to a lawyer during the interrogation period of his detention; (iii) whether rendition is prohibited; (iv) whether, as a matter of Jordanian law, the assurances in the MOU were legal and enforceable; (v) Adaleh's terms of access to him; and (vi) its capacity to monitor the assurances. (i) The Court considers that the MOU would have been considerably strengthened if it had contained a requirement that the applicant be brought within a short, defined period after his arrest before a civilian judge, as opposed to a military prosecutor. This is all the more so when experience has shown that the risk of ill-treatment of a detainee is greatest during the first hours or days of his or her detention. However, the Court notes that, although it is unusual for lawyers to accompany detainees to appearances before the Public

	Prosecutor, as a matter of Jordanian law, the applicant would be entitled as of right to have a lawyer present. Given that the applicant's appearance before the Public Prosecutor within twenty-four hours of his return would be the first public opportunity for the Jordanian authorities to demonstrate their intention to comply with the assurances, the Court considers that it would be unlikely for the Public Prosecutor to refuse to allow a lawyer to be present. Moreover, the applicant's first appearance before the Public Prosecutor must be seen in the context of the other arrangements which are in place for his return. For instance, it is likely that the monitors who would travel with the applicant from the United Kingdom to Jordan would remain with him for at least part of the first day of detention in Jordan. (ii) For the second concern, the absence of a lawyer during interrogation, SIAC found that it was unlikely that the applicant would have a lawyer present during questioning by the GID, that it was likely that he would have a lawyer present for any questioning by the Public Prosecutor and very likely that he would have such representation for any appearance before a judge. In the present case, that risk is substantially reduced by the other safeguards contained in the MOU and the monitoring arrangements. (iii) The Court would discount the risk that the applicant would be ill-treated if questioned by the CIA, that he would be placed in a secret GID or CIA "ghost" detention facility in Jordan, or that he would be subject to rendition to a place outside Jordan. In *Babar Ahmad and Others*, cited above, §§ 78-82 and 113-116, the Court observed that extraordinary rendition, by its deliberate circumvention of due process, was anathema to the rule of law and the values protected by the Convention. However, in that case, it found the applicants' complaints that they would be subjected to extraordinary rendition to be manifestly ill-founded. Although the United States, which had requested their extradition, had not given any express assurances against rendition, it had given assurances that they would be tried before federal courts; the Court found rendition would hardly be compatible with those assurances. Similar considerations apply in the present case. Although rendition is not specifically addressed in the MOU, the MOU clearly contemplates that the applicant will be deported to Jordan, detained and retried for the offences for which he was convicted *in absentia* in 1998 and 1999. If he is convicted, he will be imprisoned in a GID detention facility. It would wholly incompatible with the MOU for Jordan to receive the applicant and, instead of retrying him, to hold him at an undisclosed site in Jordan or to render him to a third state. By the same token, even if he were to be interrogated by the United States authorities while in GID detention, the Court finds no evidence to cast doubt on SIAC's conclusion that the Jordanian authorities would be careful to ensure that the United States did not "overstep the mark" by acting in a way which violated the spirit if not the letter of the MOU. (iv) It may well be that as matter of Jordanian law the MOU is not legally binding. Certainly, as an assurance against illegal behaviour, it should be treated with more scepticism than in a case where the State undertakes not to do what is permitted under domestic law. Nevertheless, SIAC appreciated this distinction. It is clear from its

	determination that SIAC exercised the appropriate caution that should attach to such an assurance. The Court shares SIAC's view, not merely that there would be a real and strong incentive in the present case for Jordan to avoid being seen to break its word but that the support for the MOU at the highest levels in Jordan would significantly reduce the risk that senior members of the GID, who had participated in the negotiation of the MOU, would tolerate non-compliance with its terms. (v) The applicant has relied on the discrepancy between the Arabic and English versions of the MOU as evidence that Adaleh will only have access to him for three years after his deportation. However, the Court considers that this issue has been resolved by the diplomatic notes which have been exchanged by the Jordanian and United Kingdom Governments, which make clear that Adaleh will have access to the applicant for as long as he remains in detention. (vi) It is clear that the Adaleh Centre does not have the same expertise or resources as leading international NGOs such as Amnesty International, Human Rights Watch or the International Committee of the Red Cross. Nor does it have the same reputation or status in Jordan as, for example, the Jordanian NCHR. However, in its determination SIAC recognised this weakness. It recognised the Centre's "relative inexperience and scale" but concluded that it was the very fact of monitoring visits which was important. The Court agrees with this conclusion. Moreover, the Court is persuaded that the capability of the Centre has significantly increased since SIAC's determination, even if it still has no direct experience of monitoring. The Court is satisfied that, despite its limitations, the Adaleh Centre would be capable of verifying that the assurances were respected. - Finally, in the course of the written proceedings, a question was put to the parties as to whether the applicant was at risk of a sentence of life imprisonment without parole and, if so, whether this would be compatible with Article 3 of the Convention. The parties agreed there was no such risk as life sentences in Jordan ordinarily last twenty years. The applicant also accepted that the length of his sentence could be examined in the context of his Article 6 complaint. The Court agrees with the parties and considers that, in the applicant's case, no issue would arise under Article 3 in respect of the length of any sentence which may be imposed on him in Jordan. Accordingly, the Court finds that the applicant's deportation to Jordan would not be in violation of Article 3 of the Convention. 2. The requirements of Article 13 in the context of an arguable Article 3 claim were recently set out in *A. v. the Netherland*s, cited above, §§ 155-158, which concerned the proposed expulsion of a terrorist suspect to Libya. the Court found there would have been a violation of Article 3 if the applicant were to be expelled to Libya, it found no violation of Article 13. The Netherlands Government Minister's decisions to reject the applicant's asylum request and impose an exclusion order had been reviewed by a court on appeal, and the applicant had not been hindered in challenging those decisions. The disclosure of an intelligence report to a judge in the case had not compromised the independence of the domestic courts in the proceedings and it could

	not be said that the courts had given less rigorous scrutiny to the applicant's Article 3 claim. The same approach was taken in *C.G. and Others v. Bulgaria*, no. 1365/07, § 57, 24 April 2008 and *Kaushal and Others v. Bulgaria*, no. 1537/08, § 36, 2 September 2010, both of which concerned expulsion on grounds of national security. In each case, the applicant alleged the domestic courts had not subjected the executive's assertion that he presented a national security risk to meaningful scrutiny. The Court finds that the approach taken in *A. v. the Netherlands*, *C.G. and Others* and *Kaushal and Others*, all cited above, must apply in the present case and, for the following reasons, it considers that there has been no violation of Article 13. First, the Court does not consider there is any support in these cases (or elsewhere in its case-law) for the applicant's submission that there is an enhanced requirement for transparency and procedural fairness where assurances are being relied upon; as in all Article 3 cases, independent and rigorous scrutiny is what is required. Furthermore, as *C.G. and Others* and *Kaushal and Others* make clear, Article 13 of the Convention cannot be interpreted as placing an absolute bar on domestic courts receiving closed evidence, provided the applicant's interests are protected at all times before those courts. Second, the Court has previously found that SIAC is a fully independent court (see *A and Others v. the United Kingdom*, § 219). In the present case, just as in any appeal it hears, SIAC was fully informed of the Secretary of State's national security case against the applicant. It would have been able to quash the deportation order it had been satisfied that the Secretary of State's case had not been made out. As it was, SIAC found that case to be "well proved". The reasons for that conclusion are set out at length in its open determination. Third, while Parliament may not originally have intended for SIAC to consider closed evidence on safety or return, there is no doubt that, as a matter of domestic law, it can do so, provided the closed evidence is disclosed to the special advocates. Moreover, as the Government have observed, SIAC is empowered to conduct a full merits review as to safety of a deportee on return and to quash the deportation order if it considers there is a real risk of ill-treatment. Fourth, the Court notes that both the applicant and the third party interveners have submitted that involvement of special advocates in SIAC appeals is not sufficient for SIAC to meet the requirements of Article 13. The Court is not persuaded that this is the case. In *A and Others v. the United Kingdom*, cited above, the Grand Chamber considered the operation of the special advocate system in the context of appeals to SIAC against the Secretary of State's decision to detain individuals whom she suspected of terrorism and whom she believed to be a risk to national security. The Grand Chamber considered that, in such appeals, the special advocate could not perform his or her function in any useful way unless the detainee was provided with sufficient information about the allegations against him to enable him to give effective instructions to the special advocate. There is, however, a critical difference between those appeals and the present case. In *A and Others v. the United*

	Kingdom, cited above, the applicants were detained on the basis of allegations made against them by the Secretary of State. In the present case, at least insofar as the issue of the risk of ill-treatment in Jordan was concerned, no case was made against the applicant before SIAC. Instead, he was advancing a claim that there would be a real risk of ill-treatment if he were deported to Jordan. In the Court's view, there is no evidence that, by receiving closed evidence on that issue, SIAC, assisted by the special advocates, failed to give rigorous scrutiny to the applicant's claim. Nor is the Court persuaded that, by relying on closed evidence, SIAC ran an unacceptable risk of an incorrect result: to the extent that there was such a risk, it was mitigated by the presence of the special advocates. Finally, the Court accepts that one of the difficulties of the non-disclosure of evidence is that one can never know for certain what difference disclosure might have made. However, it considers that such a difficulty did not arise in this case. Even assuming that closed evidence was heard as to the United States' interest in him, the GID's commitment to respecting the assurances and the Foreign and Commonwealth Office's negotiation of the MOU, the Court considers that these issues are of a very general nature. There is no reason to suppose that, had the applicant seen this closed evidence, he would have been able to challenge the evidence in a manner that the special advocates could not. For these reasons, the Court considers that, in respect of the applicant's Article 13 complaint, SIAC's procedures satisfied the requirements of Article 13 of the Convention. 3. The Court considers that it is possible for Article 5 to apply in an expulsion case. Hence, the Court considers that a Contracting State would be in violation of Article 5 if it removed an applicant to a State where he or she was at real risk of a flagrant breach of that Article. However, as with Article 6, a high threshold must apply. A flagrant breach of Article 5 would occur only if, for example, the receiving State arbitrarily detained an applicant for many years without any intention of bringing him or her to trial. A flagrant breach of Article 5 might also occur if an applicant would be at risk of being imprisoned for a substantial period in the receiving State, having previously been convicted after a flagrantly unfair trial. The Court finds that there would be no real risk of a flagrant breach of Article 5 in respect of the applicant's pre-trial detention in Jordan. The Court has serious doubts as to whether a Public Prosecutor, a GID officer who is directly responsible for the prosecution, and whose offices are in the GID's building, could properly be considered to be "judge or other officer authorised by law to exercise judicial power". Accordingly, little weight can be attached to the fact that, pursuant to the amendments to the Jordanian Code of Criminal Procedure, the applicant would be brought before the Public Prosecutor within twenty-four hours. However, Jordan clearly intends to bring the applicant to trial and must do so within fifty days' of his being detained. The Court agrees with Lord Phillips that fifty days' detention falls far short of the length of detention required for a flagrant breach of Article 5 and,

	consequently, there would be no violation of this Article if the applicant were deported to Jordan. 4. The Court agrees with the Court of Appeal that the central issue in the present case is the real risk that evidence obtained by torture of third persons will be admitted at the applicant's retrial. Accordingly, it is appropriate to consider at the outset whether the use at trial of evidence obtained by torture would amount to a flagrant denial of justice. The Court considers that it would. International law, like the common law before it, has declared its unequivocal opposition to the admission of torture evidence. There are powerful legal and moral reasons why it has done so. It is true, as Lord Phillips observed in the House of Lords' judgment in the present case, that one of the reasons for the prohibition is that States must stand firm against torture by excluding the evidence it produces. Indeed, as the Court found in *Jalloh*, § 105, admitting evidence obtained by torture would only serve to legitimate indirectly the sort of morally reprehensible conduct which the authors of Article 3 of the Convention sought to proscribe. There are further and equally compelling reasons for the exclusion of torture evidence. Torture evidence is excluded because it is "unreliable, unfair, offensive to ordinary standards of humanity and decency and incompatible with the principles which should animate a tribunal seeking to administer justice." The Court has already found that statements obtained in violation of Article 3 are intrinsically unreliable (*Söylemez v. Turkey*, no. 46661/99, § 122, 21 September 2006). Indeed, experience has all too often shown that the victim of torture will say anything – true or not – as the shortest method of freeing himself from the torment of torture. More fundamentally, no legal system based upon the rule of law can countenance the admission of evidence – however reliable – which has been obtained by such a barbaric practice as torture. The trial process is a cornerstone of the rule of law. Torture evidence damages irreparably that process; it substitutes force for the rule of law and taints the reputation of any court that admits it. Torture evidence is excluded to protect the integrity of the trial process and, ultimately, the rule of law itself. These reasons underscore the primacy given to the prohibition on torture evidence in the Convention system and international law. For the Convention system, in its recent judgment in *Gäfgen v. Germany* [GC], no. 22978/05, §§ 165-167, ECHR 2010-..., the Court reiterated that particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. *Gäfgen* reflects the clear, constant and unequivocal position of this Court in respect of torture evidence. It confirms what the Court of Appeal in the present case had already appreciated: in the Convention system, the prohibition against the use of evidence obtained by torture is fundamental. *Gäfgen* also confirms the Court of Appeal's view that there is a crucial difference between a breach of Article 6 because of the admission of torture evidence and breaches of Article 6 that are based simply on defects in the trial process or in the composition of the trial court. Strong support for that view is found in international law. Few international norms relating to the right to a trial are more fundamental than the exclusion of evidence obtained by torture. For the foregoing reasons, the Court

	considers that the admission of torture evidence is manifestly contrary, not just to the provisions of Article 6, but to the most basic international standards of a fair trial. It would make the whole trial not only immoral and illegal, but also entirely unreliable in its outcome. It would, therefore, be a flagrant denial of justice if such evidence were admitted in a criminal trial. The Court does not exclude that similar considerations may apply in respect of evidence obtained by other forms of ill-treatment which fall short of torture. However, on the facts of the present case it is not necessary to decide this question. The applicant has alleged that his retrial would amount to a flagrant denial of justice because of a number of factors, including the absence of a lawyer during interrogation, his notoriety and the composition of the State Security Court. However, as the Court has observed, the central issue in the case is the admission of torture evidence. - The incriminating statements against the applicant were made by Al-Hamasher in the Reform and Challenge Trial and Abu Hawsher in the millennium conspiracy trial. SIAC found that there was at least a very real risk that these incriminating statements were obtained as a result of treatment by the GID which breached Article 3; it may or may not have amounted to torture. The remaining two issues which the Court must consider are: (i) whether a real risk of the admission of torture evidence is sufficient; and (ii) if so, whether a flagrant denial of justice would arise in this case. *i. Does a real risk of the admission of torture evidence suffice?* The evidence before it that Abu Hawsher and Al-Hamasher were tortured is even more compelling than at the time of SIAC's determination. The report of Mr Al-Khalili and Mr Najdawi is, for the most part, balanced and objective. It frankly assesses the strengths and weaknesses of the Jordanian State Security Court system and recognises the GID's attempts to extract confessions from suspects. However, the main weakness in the report is that its authors do not examine for themselves the allegations of torture which were made by the applicant's co-defendants; the report merely records the conclusions of the State Security Court at each trial that the co-defendants were not tortured. Ms Refahi, on the other hand, travelled twice to Jordan to interview the lawyers and defendants at the original trials. Her two statements give detailed accounts of her interviews and record, in clear and specific terms, the allegations of torture made by the defendants. There is every reason to prefer her evidence on this point to the more generalised conclusions of Mr Al-Khalili and Mr Najdawi. Furthermore, in the millennium conspiracy trial, some corroboration for Abu Hawsher's allegations must be found in Amnesty International's report of 2006 which sets out its findings that four of the defendants, including Abu Hawsher were tortured. The allegations of ill-treatment of one co-defendant, Ra-ed Hijazi are particularly convincing, not least because several witnesses were reported to have seen him propped up by two

	guards at the crime scene reconstruction and his treatment appears to have been the subject of a diplomatic protest by the United States. Finally, some reliance must be placed on the fact that torture is widespread and routine in Jordan. If anything, it was worse when the applicant's co-defendants were detained and interrogated. The systemic nature of torture by the GID (both then and now) can only provide further corroboration for the specific and detailed allegations which were made by Abu Hawsher and Al-Hamasher. However, even accepting that there is still only a real risk that the evidence against the applicant was obtained by torture, for the following reasons, the Court considers it would be unfair to impose any higher burden of proof on him. First, the Court does not consider that the balance of probabilities test is appropriate in this context. Second, the Court does not consider that the Canadian and German case-law, which has been submitted by the Government provides any support for their position Third, and most importantly, due regard must be had to the special difficulties in proving allegations of torture. Torture is uniquely evil both for its barbarity and its corrupting effect on the criminal process. It is practiced in secret, often by experienced interrogators who are skilled at ensuring that it leaves no visible signs on the victim. All too frequently, those who are charged with ensuring that torture does not occur – courts, prosecutors and medical personnel – are complicit in its concealment. In a criminal justice system where the courts are independent of the executive, where cases are prosecuted impartially, and where allegations of torture are conscientiously investigated, one might conceivably require a defendant to prove to a high standard that the evidence against him had been obtained by torture. However, in a criminal justice system which is complicit in the very practices which it exists to prevent, such a standard of proof is wholly inappropriate. The Jordanian State Security Court system is a case in point. Not only is torture widespread in Jordan, so too is the use of torture evidence by its courts. In its conclusions on Article 15 of UNCAT, the Committee Against Torture expressed its concern at reports that the use of forced confessions in courts was widespread. The Special Rapporteur has described a system where the "presumption of innocence is illusory" and "primacy is placed on obtaining confessions". The reports of Amnesty International and Human Rights Watch support this view. Finally, the NCHR has, in successive reports, expressed its own concerns about the manner in which statements obtained by coercion become evidence in Jordanian courts. The Court recognises that Jordanian law provides a number of guarantees to defendants in State Security Court cases. The use of evidence obtained by torture is prohibited. The burden is on the prosecution to establish that confessions made to the GID have not been procured by the use of torture and it is only in relation to confessions made before the Public Prosecutor that the burden of proof of torture is imposed on the defendant. However, in the light of the evidence summarised in the preceding paragraph, the Court is unconvinced that these legal guarantees have any real practical value. For instance, if a defendant fails to prove that the prosecution was implicated in obtaining an involuntary confession, that confession is

	admissible under Jordanian law regardless of any prior acts of ill-treatment or other misconduct by the GID. This is a troubling distinction for Jordanian law to make, given the closeness of the Public Prosecutor and the GID. Furthermore, while the State Security Court may have the power to exclude evidence obtained by torture, it has shown little readiness to use that power. Instead, the thoroughness of investigations by the State Security Court into the allegations of torture is at best questionable. The lack of independence of the State Security Court assumes considerable importance in this respect. Thus, while, on any retrial of the applicant, it would undoubtedly be open to him to challenge the admissibility of Abu Hawsher and Al-Hamasher's statements and to call evidence to support this, the difficulties confronting him in trying to do so many years after the event and before the same court which has already rejected such a claim (and routinely rejects all such claims) are very substantial indeed. Therefore, the Court considers that, given the absence of clear evidence of a proper and effective examination of Abu Hawsher and Al-Hamasher's allegations by the State Security Court, the applicant has discharged the burden that could be fairly imposed on him of establishing the evidence against him was obtained by torture. *ii. Would there be a flagrant denial of justice in this case?* SIAC found that there was a high probability that Abu Hawsher and Al-Hamasher's evidence incriminating the applicant would be admitted at the retrial and that this evidence would be of considerable, perhaps decisive, importance against him. The Court agrees with these conclusions. The Court has found that a flagrant denial of justice will arise when evidence obtained by torture is admitted in criminal proceedings. The applicant has demonstrated that there is a real risk that Abu Hawsher and Al-Hamasher were tortured into providing evidence against him and the Court has found that no higher burden of proof can fairly be imposed upon him. Having regard to these conclusions, the Court, in agreement with the Court of Appeal, finds that there is a real risk that the applicant's retrial would amount to a flagrant denial of justice. The Court would add that it is conscious that the Grand Chamber did not find that the test had been met in *Mamatkulov and Askarov*, a factor which was of some importance to the House of Lords' conclusion that there would be no flagrant breach in the present case. However, as the applicant has submitted, the focus of the Grand Chamber's judgment in the *Mamatkulov and Askarov* case was on the binding effect of Rule 39 indications rather than on the substantive issues raised in that case under Article 6. Second, the complaint made by the applicants in that case of a violation of Article 6 was of a general and unspecific nature, the applicants alleging that at the time of their extradition they had no prospect of receiving a fair trial in Uzbekistan. Third, the Court found that, though in the light of the information available at the time of the applicants' extradition, there may have been reasons for doubting that they would receive a fair trial in Uzbekistan, there was not sufficient evidence to show that any irregularities in the trial were liable to constitute a flagrant denial of justice; the fact that Court had been

	prevented from obtaining additional information to assist it in its assessment of whether there was such a real risk by Turkey 's failure to comply with Rule 39 was seen by the Court as a matter to be examined with respect to the complaint under Article 34 of the Convention. In the present case, the situation is different. Extensive evidence was presented by the parties in respect of the applicant's re-trial in Jordan and thoroughly examined by the domestic courts. Moreover, in the course of the proceedings before this Court, the applicant has presented further concrete and compelling evidence that his co-defendants were tortured into providing the case against him. He has also shown that the Jordanian State Security Court has proved itself to be incapable of properly investigating allegations of torture and excluding torture evidence, as Article 15 of UNCAT requires it to do. His is not the general and unspecific complaint that was made in *Mamatkulov and Askarov*; instead, it is a sustained and well-founded attack on a State Security Court system that will try him in breach of one of the most fundamental norms of international criminal justice, the prohibition on the use of evidence obtained by torture. In those circumstances, and contrary to the applicants in Mamatkulov and Askarov, the present applicant has met the burden of proof required to demonstrate a real risk of a flagrant denial of justice if he were deported to Jordan. The Court considers that the foregoing conclusion makes it unnecessary (save as above) to examine the applicant's complaints relating to the absence of a lawyer in interrogation, the prejudicial consequences of his notoriety, the composition of the State Security Court, and the aggravating nature of the length of sentence he would face if convicted. The Court finds that the applicant's deportation to Jordan would be in violation of Article 6 of the Convention.
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	*Circumstances: The case* concerns three applicants who, having been convicted of murder in separate criminal proceedings in England and Wales, are currently serving mandatory sentences of life imprisonment. All three applicants have been given whole life orders. Vinter was convicted for two murders, the second murder was committed in 2008 while the first applicant was released on parole ('on licence') after having being convicted for the first murder in 1996. The second applicant, Bamber murdered five members of his own family in 1985 and was convicted in 1986. In 1988 the Secretary of State imposed a whole life tariff. The third applicant, Moore was convicted in 1996 for having stabbing four homosexual men to dead in 1995. In 2002 The Secretary of State set a whole life tariff. Background: Since the abolition of the death penalty in England and Wales, the sentence for murder has been a mandatory sentence of life imprisonment. When such a sentence is imposed, it is the current practice, in the majority of cases, for the trial judge to set a minimum term of imprisonment which must be served before the prisoner is eligible for release on licence. Exceptionally, however, "a whole life order" may be imposed by the trial judge instead of a minimum term. This has the effect that the prisoner cannot be released other than at the discretion of the Secretary of State. The Secretary of State will only exercise his discretion on compassionate

	grounds when the prisoner is terminally ill or seriously incapacitated. *Relevant complaints*: - The applicants complained that their whole life orders violated Article 3 of the Convention. - The applicants also complained that the imposition of whole life orders without the possibility of regular review by the courts violated Article 5 § 4 or, alternatively, Article 6 of the Convention. *Court's conclusions:* Basic principles a. Would a grossly disproportionate sentence imposed by a Contracting State violate Article 3? b. At what point in the course of a life or other very long sentence might an Article 3 issue arise? (1) The Court notes that all five Law Lords in *Wellington* found that, in a sufficiently exceptional case, an extradition would be in violation of Article 3 if the applicant faced a grossly disproportionate sentence in the receiving State. The Court further notes that, in their observations in the present cases, the Government, relying on the *Soering* judgment, accept that a particular sentence could violate Article 3 if it were wholly unjustified or grossly disproportionate to the gravity of the crime. The Court notes that support for this proposition can also be found in the comparative materials before the Court. Those materials demonstrate that "gross disproportionality" is a widely accepted and applied test for determining when a sentence will amount to inhuman or degrading punishment, or equivalent constitutional norms. Consequently, the Court is prepared to accept that while, in principle, matters of appropriate sentencing largely fall outside the scope of Convention (*Léger*, § 72), a grossly disproportionate sentence could amount to ill-treatment contrary to Article 3 at the moment of its imposition. However, the Court also considers that the comparative materials set out above demonstrate that "gross disproportionality" is a strict test and, as the Supreme Court of Canada observed in *Latimer*, it will only be on "rare and unique occasions" that the test will be met. (2) The Court considers that, subject to the general requirement that a sentence should not be grossly disproportionate, for life sentences it is necessary to distinguish between three types of sentence: (i) a life sentence with eligibility for release after a minimum period has been served; (ii) a discretionary sentence of life imprisonment without the possibility of parole; and (iii) a mandatory sentence of life imprisonment without the possibility of parole. The first sentence is clearly reducible and no issue can therefore arise under Article 3. For the second, a discretionary sentence of life imprisonment without the possibility of parole, the Court observes that, normally, such sentences are imposed for offences of the utmost severity, such as murder or manslaughter. In any legal system, such offences, if they do not attract a life sentence, will normally attract a substantial sentence of imprisonment, perhaps of several decades. Therefore, any defendant who is convicted of such an offence must expect to serve a significant number of years in prison before he can realistically have

	any hope of release, irrespective of whether he is given a life sentence or a determinate sentence. It follows, therefore, that, if a discretionary life sentence is imposed by a court after due consideration of all relevant mitigating and aggravating factors, an Article 3 issue cannot arise at the moment when it is imposed. Instead, the Court agrees with the Court of Appeal in *Bieber* and the House of Lords in *Wellington* that an Article 3 issue will only arise when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds (such as punishment, deterrence, public protection or rehabilitation); and (ii) as the Grand Chamber stated in *Kafkaris*, cited above, the sentence is irreducible *de facto* and *de iure*. For the third sentence, a mandatory sentence of life imprisonment without the possibility of parole, the Court considers that greater scrutiny is required. The vice of any mandatory sentence is that it deprives the defendant of any possibility to put any mitigating factors or special circumstances before the sentencing court (see, for instance, *Reyes* and *de Boucherville*). This is especially true in the case of a mandatory sentence of life imprisonment without the possibility of parole, a sentence which, in effect, condemns a defendant to spend the rest of his days in prison, irrespective of his level of culpability and irrespective of whether the sentencing court considers the sentence to be justified. However, in the Court's view, these considerations do not mean that a mandatory sentence of life imprisonment without the possibility of parole is *per se* incompatible with the Convention, although the trend in Europe is clearly against such sentences. Instead, these considerations mean that such a sentence is much more likely to be grossly disproportionate than any of the other types of life sentence, especially if it requires the sentencing court to disregard mitigating factors which are generally understood as indicating a significantly lower level of culpability on the part of the defendant, such as youth or severe mental health problems (see, for instance, *Hussain v. the United Kingdom* and *Prem Singh v. the United Kingdom,* judgments of 21 February 1996, *Reports* 1996-I at §§ 53 and 61 respectively). The Court concludes therefore that, in the absence of any such gross disproportionality, an Article 3 issue will arise for a mandatory sentence of life imprisonment without the possibility of parole in the same way as for a discretionary life sentence, that is when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds; and (ii) that the sentence is irreducible *de facto* and *de iure* (*Kafkaris*). The Court observes that, of the three sentences outlined above, only the first two may be imposed in England and Wales. The whole life orders imposed in the present cases are, in effect, discretionary sentences of life imprisonment without parole. Once imposed, such sentences are not subject to later review: release can only be obtained from the Secretary of State on compassionate grounds. The Court would observe that the Secretary of State's policy on compassionate release appears to be much narrower than the Cypriot policy on release which was considered in *Kafkaris*. First, as presently drafted, the policy could conceivably mean that a prisoner will

	remain in prison even if his continued imprisonment cannot be justified on any legitimate penological grounds, as long as he does not become terminally ill or physically incapacitated. Second, it is of some relevance that the practice of a twenty-five year review, which existed under the old system, was not included in the reforms introduced by the 2003 Act. No clear explanation has been provided for this omission, even though it would appear that a twenty-five year review, supplemented by regular reviews thereafter, would be one means by which the Secretary of State could satisfy himself that the prisoner's imprisonment continued to be justified on legitimate penological grounds. Third, the Court doubts whether compassionate release for the terminally ill or physically incapacitated could really be considered release at all, if all that it means is that a prisoner dies at home or in a hospice rather than behind prison walls. However, the Court considers that the issue of *de facto* reducibility does not arise for examination in the present cases. - First, the Court notes that the applicants have not sought to argue that their whole life orders were grossly disproportionate in their case. Given the gravity of the murders for which they were convicted, the Court does not find that they were. - Second, the Court considers that none of the applicants has demonstrated that their continued incarceration serves no legitimate penological purpose. The first applicant, Mr Vinter, has only been serving his sentence for three years. His crime was a particularly brutal and callous murder, all the more so for the fact that it was committed while he was on parole from a life sentence imposed for a previous murder. Despite the evidence he has produced as to the deterioration in his mental state in that time, the Court is satisfied that his incarceration serves the legitimate penological purposes of punishment and deterrence. The second and third applicants, Mr Bamber and Mr Moore, have now served respectively twenty-six and sixteen years in prison. However, they were effectively re-sentenced in 2009 when they applied to the High Court for review of their whole life tariffs. In each case, the High Court had before it all relevant information on the applicants and the offences for which they had been convicted. There is no indication in that re-sentencing process that the High Court considered that either applicant's continued incarceration served no legitimate penological purpose; on the contrary, in each case the High Court found that the requirements of punishment and deterrence could only be satisfied by a whole life order. These were sentences that the High Court was entitled to impose and, in each case, it gave relevant, sufficient and convincing reasons for its decision. In light of the High Court's decisions, the Court is similarly satisfied that the continued incarceration of the second and third applicants served the legitimate penological purposes of punishment and deterrence. For these reasons, the Court considers that there has been no violation of Article 3 of the Convention in the case of any of the applicants. 2. The Court further considers that the issue raised by this complaint has been determined by its recent

	admissibility decision in *Kafkaris v. Cyprus (no. 2)* (dec.), no. 9644/09, 21 June 2011. That application was introduced by Mr Kafkaris following the Grand Chamber's judgment in his case. He complained *inter alia* that, under Article 5 § 4, he was entitled to a further review of his detention, arguing that his original conviction by the Limassol Assize Court was not sufficient for the purposes of that provision. He submitted that he had already served the punitive period of his sentence and, relying on *Stafford*, cited above, argued that new issues affecting the lawfulness of his detention had arisen. These included the Grand Chamber's finding of a violation of Article 7, the Attorney-General's subsequent refusal to recommend a presidential pardon and the fact that, in habeas corpus proceedings, the Supreme Court had failed to consider factors such as his degree of dangerousness and rehabilitation. The Court rejected that complaint as manifestly ill-founded. The Court found that the Assize Court had made it quite plain that the applicant had been sentenced to life imprisonment for the remainder of his life. It was clear, therefore, that the determination of the need for the sentence imposed on the applicant did not depend on any elements that were likely to change in time. The "new issues" relied upon by the applicant could not be regarded as elements which rendered the reasons initially warranting detention obsolete or as new factors capable of affecting the lawfulness of his detention. Nor could it be said that the applicant's sentence was divided into a punitive period and a security period as he claimed. Accordingly, the Court considered that the review of the lawfulness of the applicant's detention required under Article 5 § 4 had been incorporated in the conviction pronounced by the courts, no further review therefore being required. The Court considers the complaints made in the present cases to be indistinguishable from the complaint made in *Kafkaris (no. 2)*. The Court has accepted that continued detention may violate Article 3 if it is no longer justified on legitimate penological grounds and the sentence is irreducible *de facto* and *de iure*. However, contrary to the applicant's submissions, it does not follow that their detention requires to be reviewed regularly in order for it to comply with the provisions of Article 5. Moreover, it is clear from the trial judge's remarks in respect of the first applicant and the High Court's remarks in respect of the second and third applicants that whole life orders have been imposed on them to meet the requirements of punishment and deterrence. This is supported by the Court of Appeal's statement in *R v. Neil Jones and others* that a whole life order should be imposed "where the seriousness of the offending is so exceptionally high that just punishment requires the offender to be kept in prison for the rest of his or her life". The present applicants' sentences are therefore different from the life sentence considered in *Stafford*, which the Court found was divided into a tariff period (imposed for the purposes of punishment) and the remainder of the sentence, when continued detention was determined by considerations of risk and dangerousness. Consequently, as in *Kafkaris (no. 2)*, the Court is satisfied that the lawfulness of the applicants' detention required under Article 5 § 4 was incorporated in the whole life orders imposed by the domestic courts in their cases, and no further review would be required by

	Article 5 § 4. Accordingly, these complaints are manifestly ill-founded and must be rejected. Remarks: - The second and third applicants further complained that the making of whole life orders in their case by the High Court was in violation of Article 7 of the Convention. This complaint was rejected as manifestly ill founded. - In a 4 to 3 decision, the Court has confirmed its reasoning made in Kafkaris v. Cyprus and found no violation of article 3. On 24 September 2012, the Panel decided to refer the matter to the Grand Chamber.
M. S. v. Belgium 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	*Circumstances:* Expulsion procedure initiated by Belgium against an Iraqi national, suspected of having links 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) – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Deportation of a Syrian national from Bosnia-Herzegovina to Syria because of his association with the mujahedin terrorist organization. *Relevant complaints:* 1.The applicant claimed that he would be subjected to ill-treatment if he were to be deported to Syria. The domestic authorities did not sufficiently take into account the nature of the mujahedin movement to which the applicant undoubtedly belonged. The human rights situation in Syria is of such a nature that the risk of ill-treatment is serious and realistic. 2. The applicant contested the lawfulness of his detention for the purpose of his expulsion. The detention was arbitrary given that a deportation order had been issued only on 1 February 2011 (more than two years and three months after his arrest). He further complained about the duration of his detention (more than three years to date). *Court's conclusions*: Many mujahedin had jihadist goals, links with fundamentalists all over the world and with charities which have been placed on the United Nations list of entities associated with al-Qaeda. Some mujahedin were members of al-Qaeda. In the aftermath of the war in BH the applicant gave a number of interviews to some of the leading Arabic media outlets, revealing his association with the mujahedin movement and advocating the Saudi-inspired Wahhabi/Salafi version of Islam. Even assuming that this remained unnoticed by the Syrian authorities, the applicant was again made the centre of attention when he was wrongly identified as convicted terrorist Abu Hamza al-Masri in the US Department of State's Country Report on Terrorism in BH. and arrested in BH on national security grounds. The Court is of the view that these factors would be likely to make him a person of interest for the Syrian authorities. In fact, the applicant submitted a document issued by the Syrian security services on 16 August 2002 indicating that he should be arrested upon the moment of his entering the country and a document issued by the Syrian armed forces on 15 October 2009 indicating that the security services were holding a file containing information about the applicant. The respondent Government did not contest the authenticity of those documents. Syria's human rights record and the fact that the situation in Syria has deteriorated since the onset of political protest and civil unrest in March 2011, there is a real risk that the applicant, if deported to Syria, would be subjected to ill-treatment. Since the deportation proceedings against the applicant were instituted on 1 February 2011, whereas the applicant was arrested on 6 October 2008, the detention under Article 5 § 1 (f) was justified only for as long as

	deportation proceedings are pending, the first period of the applicant's detention (lasting from 6 October 2008 until 31 January 2011) was clearly not justified under Article 5 § 1 (f) of the Convention. A voluntary departure period had already been indicated to the applicant in 2007 within the context of his asylum and residence proceedings, this did not amount to a deportation order.
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	*Circumstances:* Expulsion of a Ghanaian national and his family – wife and two children. The latter had acquired the Norwegian nationality. *Relevant complaints:* The applicants complained that the Norwegian immigration authorities' decision, upheld by the national courts, that the first applicant be expelled to Ghana with a prohibition on re-entry for five years would entail a breach of their rights under Article 8 of the Convention. It would disrupt the relationships between the first and the third applicants in a manner that would have long lasting damaging effects on the latter. *Court's conclusions:* That the impugned expulsion and five-year prohibition on re-entry had been imposed on the *first* applicant in view of the gravity of his violations of the Immigration Act (the use of a false identity and making false statements about his nationality). There is no reason to question the assessment of the national immigration authorities and courts as to the aggravated character of the first applicant's administrative offences under the Act. The possibility for the authorities to react with expulsion would constitute an important means of general deterrence against gross or repeated violations of the Immigration Act. A scheme of implementation of national immigration law which, as here, is based on administrative sanctions in the form of expulsion does not as such raise an issue of failure to comply with Article 8 of the Convention. The public interest in favour of ordering the first applicant's expulsion weighed heavily in the balance when assessing the issue of proportionality under Article 8 of the Convention. The first applicant had grown up in Ghana, where his family lived, and had arrived in Norway at an adult age. His links to Norway could not be said to outweigh those of his home country and had in any event been formed through unlawful residence and without any legitimate expectation of being able to remain in the country. Both parents having been born and brought up in Ghana and having visited the country three times with their daughter, there were no insurmountable obstacles in the way of the applicants settling together in Ghana or, at the least, to maintaining regular contacts. As to the allegation that the third applicant's rashes had been aggravated by heat during her previous stays in Ghana, the High Court majority found that this had not been sufficiently documented and could not be relied upon. The Court did not find that the national authorities of the respondent State acted arbitrarily or otherwise transgressed the margin of appreciation which should be accorded to it in this area when seeking to strike a fair balance between its public interest in ensuring effective immigration control, on the one hand, and the applicants' need that the first applicant be able to

	remain in Norway, on the other hand.
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	*Circumstances:* the applicants are eleven Somali nationals and thirteen Eritrean nationals, were part of a group of about two hundred individuals who left Libya aboard three vessels with the aim of reaching the Italian coast. At 35 nautical miles south of Lampedusa (Agrigento), the vessels were intercepted by three ships from the Italian Revenue Police (*Guardia di finanza*) and the Coastguard. The occupants of the intercepted vessels were transferred onto Italian military ships and returned to Tripoli. *Relevant complaints:* 1. The applicants complained that they had been exposed to the risk of torture or inhuman or degrading treatment in Libya and in their respective countries of origin, namely, Eritrea and Somalia, as a result of having been returned. 2. The removal of the applicants was of a collective nature, in breach of Article 4 of Protocol No. 4. *Court's conclusions:* The jurisdiction of a State, within the meaning of Article 1, is essentially territorial. It is presumed to be exercised normally throughout the State's territory. . In keeping with the essentially territorial notion of jurisdiction, the Court has accepted only in exceptional cases that acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction by them within the meaning of Article 1 of the Convention. Whenever the State through its agents operating outside its territory exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section 1 of the Convention that are relevant to the situation of that individual. In this sense, therefore, the Court has now accepted that Convention rights can be "divided and tailored". There are other instances in the Court's case-law of the extra-territorial exercise of jurisdiction by a State in cases involving the activities of its diplomatic or consular agents abroad and on board craft and vessels registered in, or flying the flag of, that State. In these specific situations, the Court, basing itself on customary international law and treaty provisions, has recognised the extra-territorial exercise of jurisdiction by the relevant State. Italy cannot circumvent its "jurisdiction" under the Convention by describing the events at issue as rescue operations on the high seas. In particular, the Court cannot subscribe to the Government's argument that Italy was not responsible for the fate of the applicants on account of the allegedly minimal control exercised by the authorities over the parties concerned at the material time. The events took place entirely on board ships of the Italian armed forces, the crews of which were composed exclusively of Italian military personnel. In the Court's opinion, in the period between boarding the ships of the Italian armed forces and being handed over to the Libyan authorities, the applicants were under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities.

	1. - Regarding the return of the applicants to Libya: The States which form the external borders of the European Union are (currently) experiencing considerable difficulties in coping with the increasing influx of migrants and asylum seekers. The Court does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis. Numerous reports by international bodies and non-governmental organisations paint a disturbing picture of the treatment meted out to clandestine immigrants in Libya at the material time. Any person entering the country by illegal means was deemed to be clandestine and no distinction was made between irregular migrants and asylum seekers. Consequently, those persons were systematically arrested and detained in conditions that outside visitors, such as delegations from the UNHCR, Human Rights Watch and Amnesty International, could only describe as inhuman. Many cases of torture, poor hygiene conditions and lack of appropriate medical care were denounced by all the observers. In that regard, the Court observes that Libya's failure to comply with its international obligations was one of the facts denounced in the international reports on that country. In any event, the Court is bound to observe that the existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights 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. Italy cannot evade its own responsibility by relying on its obligations arising out of bilateral agreements with Libya. Even if it were to be assumed that those agreements made express provision for the return to Libya of migrants intercepted on the high seas, the Contracting States' responsibility continues even after their having entered into treaty commitments subsequent to the entry into force of the Convention or its Protocols in respect of these States. The presence and activity of a UNHCR office in Tripoli, even before it was finally closed in April 2010, was never recognised in any way by the Libyan government. The documents examined by the Court show that the refugee status granted by the UNHCR did not guarantee the persons concerned any kind of protection in Libya. The situation was well-known and easy to verify on the basis of multiple sources. It therefore considers that when the applicants were removed, the Italian authorities knew or should have known that, as irregular migrants, they would be exposed in Libya to treatment in breach of the Convention and that they would not be given any kind of protection in that country. The applicants had failed to sufficiently describe the risks in Libya because they had not applied to the Italian authorities for asylum. The mere fact that the applicants had opposed their disembarkation in Libya could not, according to the Government, be considered to be a request for protection, imposing on Italy an obligation under Article 3 of the Convention. That fact was disputed by the applicants, who stated that they had informed the Italian military personnel of their intention to request international protection. Furthermore, the applicants' version is

	corroborated by the numerous witness statements gathered by the UNHCR and Human Rights Watch. It was for the national authorities, faced with a situation in which human rights were being systematically violated to find out about the treatment to which the applicants would be exposed after their return. The fact that the parties concerned had failed to expressly request asylum did not exempt Italy from fulfilling its obligations under Article 3. - Regarding the risk of arbitrary repatriation to Eritrea and Somalia: The information in the Court's possession shows *prima facie* that the situation in Somalia and Eritrea posed and continues to pose widespread serious problems of insecurity. That finding has not been disputed before the Court. The Italian authorities knew or should have known that there were insufficient guarantees protecting the parties concerned from the risk of being arbitrarily returned to their countries of origin, having regard in particular to the lack of any asylum procedure and the impossibility of making the Libyan authorities recognise the refugee status granted by the UNHCR. Italy is not exempt from complying with its obligations under Article 3 of the Convention because the applicants failed to ask for asylum or to describe the risks faced as a result of the lack of an asylum system in Libya. It reiterates that the Italian authorities should have ascertained how the Libyan authorities fulfilled their international obligations in relation to the protection of refugees. 2. The transfer of the applicants to Libya was carried out without any form of examination of each applicant's individual situation. It has not been disputed that the applicants were not subjected to any identification procedure by the Italian authorities, which restricted themselves to embarking all the intercepted migrants onto military ships and disembarking them on Libyan soil. Moreover, the Court notes that the personnel aboard the military ships were not trained to conduct individual interviews and were not assisted by interpreters or legal advisers. An applicant's complaint alleging that his or her removal to a third State would expose him or her to treatment prohibited under Article 3 of the Convention "must imperatively be subject to close scrutiny by a 'national authority'". That principle has led the Court to rule that the notion of "effective remedy" within the meaning of Article 13 taken together with Article 3 requires firstly "independent and rigorous scrutiny" of any complaint made by a person in such a situation, where "there exist substantial grounds for fearing a real risk of treatment contrary to Article 3" and secondly, "the possibility of suspending the implementation of the measure impugned". In relation to Article 13 taken together with Article 4 of Protocol No. 4, a remedy must meet the requirements of the former if it has suspensive effect. The applicants had no access to a procedure to identify them and to assess their personal circumstances before they were returned to Libya. The Government acknowledged that no provision was made for such procedures aboard the military ships onto which the applicants were made to embark. There were neither interpreters nor legal advisers among the personnel on board. Anyone subjected to a removal measure, the consequences of which are potentially irreversible, must be

	guaranteed the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints.
Samaras and Others v. Greece No.: 11463/09 Type: Judgment Date: 28 February 2012 Articles: Y: 3 Keyword: – ill-treatment Links: French only Translations: not available	*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 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	*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

Articles: – Keywords: – interim measure Links: English only Translations: not available	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	*See the summary of the very similar case of Ben Khemais v. Italy.*
Babar Ahmad and Others v. United Kingdom	*NOTE: For the Decision, see above.* *Circumstances:* Extradition of six British nationals and one person of disputed nationality from the United

(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	Kingdom to the United States of America for the purposes of prosecution for various terrorist and terrorism-related offences. *Remark*: the Court declared the fifth and sixth applicant's complaints in relation to ADX Florence and the imposition of special administrative measures post-trial to be indistinguishable admissible. The remainder of the 5th and 6th applicant's complaints were considered manifestly ill-founded and therefore inadmissible. The upheld its similar decision on the remainder of the complaints of the 1st, 2nd, 3th and 4th applicants in its partial admissibility decision of 6 July 2010 (see above). The Court decided that it is not in a position to rule on the merits of the 2nd applicant's (Syed Tahla Ahsan) complaints, given his schizophrenia which required him to be transferred to Broadmoor Hospital, particularly in respect of ADX Florence. It requires further submissions from the parties. For that reason, it decides to adjourn the examination of the second applicant's complaints. Those complaints will now be considered under a new application number, no. 17299/12. *Relevant remaining complaints:* The applicants made two complaints that were deemed admissible in relation to their proposed extradition.: 1. If extradited and convicted in the United States, they would be detained at ADX Florence and, furthermore, would be subjected to special administrative measures (SAMS). They submitted that conditions of detention at ADX Florence (whether alone or in conjunction with SAMS) would violate Article 3 of the Convention 2. If extradited and convicted, they would face sentences of life imprisonment without parole and/or extremely long sentences of determinate length in violation of Article 3 of the Convention. *Court's conclusions:* 1. In order to fall under Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the state of health of the victim. For a violation of Article 3 to arise from an applicant's conditions of detention, the suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve an element of suffering or humiliation. However, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of these

	conditions, as well as of specific allegations made by the applicant. Furthermore the Court evaluated the complaint regarding the eventual detention in ADX Supermax specifically with respect to solitary confinement, recreation and outdoor exercise and mental health issues during detention. The Court found that (1) there no basis for the applicants' submission that placement at ADX would take place without any procedural safeguards. The Federal Bureau of Prisons applies accessible and rational criteria when deciding whether to transfer an inmate to ADX. Placement is accompanied by a high degree of involvement of senior officials within the Bureau who are external to the inmate's current institution. Their involvement and the requirement that a hearing be held before transfer provide an appropriate measure of procedural protection. There is no evidence to suggest that such a hearing is merely window dressing. Even if the transfer process were unsatisfactory, there would be recourse to both the Bureau's administrative remedy programme and the federal courts, by bringing a claim under the due process clause of the Fourteenth Amendment, to cure any defects in the process. The applicants' current detention in high security facilities in the United Kingdom demonstrates, the United States' authorities would be justified in considering the applicants, if they are convicted, as posing a significant security risk and justifying strict limitations on their ability to communicate with the outside world. There is nothing to indicate that the United States' authorities would not continually review their assessment of the security risk which they considered the applicants to pose. The Federal Bureau of Prisons has well-established procedures for reviewing an inmate's security classification and carrying out reviews of that classification in six-monthly program reviews and three-yearly progress reports. Moreover, the United States' authorities have proved themselves willing to revise and to lift the special administrative measures which have been imposed on terrorist inmates thus enabling their transfer out of ADX to other, less restrictive institutions. (2) The isolation experienced by ADX inmates is partial and relative and (3) although inmates are confined to their cells for the vast majority of the time, a great deal of in-cell stimulation is provided through television and radio channels, frequent newspapers, books, hobby and craft items and educational programming. The range of activities and services provided goes beyond what is provided in many prisons in Europe. (4) Finally: the Court notes that the mental health conditions of the applicants have not prevented their being detained in high-security prisons in the United Kingdom. It would not appear that the psychiatric services which are available at ADX would be unable to treat such conditions. The Court decided unanimously that there would be no violation of Article 3 of the Convention as a result of conditions at ADX Florence and the imposition of special administrative measures post-trial if the first, third, fifth and sixth applicants were extradited to the United States. 2. In a sufficiently exceptional case, an extradition would be in violation of Article 3 if the applicant faced a

	grossly disproportionate sentence in the receiving State. Consequently, while, in principle, matters of appropriate sentencing largely fall outside the scope of the Convention, a grossly disproportionate sentence could amount to ill-treatment contrary to Article 3 at the moment of its imposition. However, "gross disproportionality" is a strict test and it will only be on "rare and unique occasions" that the test will be met. In a removal (extradition or expulsion) case, a violation would arise if the applicant were able to demonstrate that he or she was at a real risk of receiving a grossly disproportionate sentence in the receiving State. However, the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States. Due regard must be had to the fact that sentencing practices vary greatly between States and that there will often be legitimate and reasonable differences between States as to the length of sentences which are imposed, even for similar offences. The Court therefore considers that it will only be in very exceptional cases that an applicant will be able to demonstrate that the sentence he or she would face in a non-Contracting State would be grossly disproportionate and thus contrary to Article 3. For life sentences it is necessary to distinguish between three types of sentence: (i) a life sentence with eligibility for release after a minimum period has been served; (ii) a discretionary sentence of life imprisonment without the possibility of parole; and (iii) a mandatory sentence of life imprisonment without the possibility of parole. (i) The first sentence is clearly reducible and no issue can therefore arise under Article 3. (ii) For the second, a discretionary sentence of life imprisonment without the possibility of parole, the Court observes that normally such sentences are imposed for offences of the utmost severity, such as murder or manslaughter. In any legal system, such offences, if they do not attract a life sentence, will normally attract a substantial sentence of imprisonment, perhaps of several decades. Therefore, any defendant who is convicted of such an offence must expect to serve a significant number of years in prison before he can realistically have any hope of release, irrespective of whether he is given a life sentence or a determinate sentence. It follows, therefore, that, if a discretionary life sentence is imposed by a court after due consideration of all relevant mitigating and aggravating factors, an Article 3 issue cannot arise at the moment when it is imposed. Instead, the Court that an Article 3 issue will only arise when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds (such as punishment, deterrence, public protection or rehabilitation); and (ii) as the Grand Chamber stated in *Kafkaris*, cited above, the sentence is irreducible *de facto* and *de iure*. (iii) For the third sentence, a mandatory sentence of life imprisonment without the possibility of parole, the Court considers that greater scrutiny is required. The vice of any mandatory sentence is that it deprives the

	defendant of any possibility to put any mitigating factors or special circumstances before the sentencing court. This is no truer than for a mandatory sentence of life imprisonment without the possibility of parole, a sentence which, in effect, condemns a defendant to spend the rest of his days in prison, irrespective of his level of culpability and irrespective of whether the sentencing court considers the sentence to be justified. However, in the Court's view, these considerations do not mean that a mandatory sentence of life imprisonment without the possibility of parole is *per se* incompatible with the Convention, although the trend in Europe is clearly against such sentences. The Court concludes therefore that, in the absence of any such gross disproportionality, an Article 3 issue will arise for a mandatory sentence of life imprisonment without the possibility of parole in the same way as for a discretionary life sentence, that is when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds; and (ii) that the sentence is irreducible *de facto* and *de iure* (*Kafkaris*). It is by no means certain that, if extradited, the applicants would be convicted of the charges against them. If they are, it is also by no means certain that discretionary life sentences would be imposed, particularly when none of the charges they face carries a mandatory minimum sentence of life imprisonment. Nonetheless, the Court considers that it is appropriate to proceed on the basis that discretionary life sentences are possible. It is necessary to consider whether such sentences would be grossly disproportionate. In this connection the Court observes that, while the offences with which these applicants are charged vary, all of them concern involvement in or support for terrorism. Given the seriousness of terrorism offences (particularly those carried out or inspired by Al-Qaeda) and the fact that the life sentences could only be imposed on these applicants after the trial judge considered all relevant aggravating and mitigating factors, the Court considers that discretionary life sentences would not be grossly disproportionate in their cases. In respect of a discretionary life sentence, an Article 3 issue will only arise when it can be shown: (i) that the applicant's continued incarceration no longer serves any legitimate penological purpose; and (ii) the sentence is irreducible *de facto* and *de iure*. Given that none of these applicants has been convicted, still less has begun serving any sentences which might be imposed upon conviction. The Court considers that they have not shown that, upon extradition, their incarceration in the United States would not serve any legitimate penological purpose. Indeed, if they are convicted and given discretionary life sentences, it may well be that, as the Government have submitted, the point at which continued incarceration would no longer serve any purpose may never arise. It is still less certain that, if that point were ever reached, the United States' authorities would refuse to avail themselves of the mechanisms which are available to reduce their sentences. Accordingly, the applicants have not demonstrated that there would be a real risk of treatment

	reaching the threshold of Article 3 as a result of their sentences if they were extradited to the United States. The 5th applicant faces two hundred and sixty-nine counts of murder and thus multiple mandatory sentences of life imprisonment without the possibility of parole. A mandatory life sentence would be grossly disproportionate for such offences, particularly when the fifth applicant has not adduced any evidence of exceptional circumstances which would indicate a significantly lower level of culpability on his part. If he is convicted of these charges, it is difficult to conceive of any mitigating factors which would lead a court to impose a lesser sentence than life imprisonment without the possibility of parole, even if it had the discretion to do so. Moreover, for the reasons it has given in respect of the first, third, fourth and sixth applicants, the Court considers that he has not shown that incarceration in the United States would not serve any legitimate penological purpose. Therefore, he too has failed to demonstrate that there would be a real risk of treatment reaching the threshold of Article 3 as a result of his sentence if he were extradited to the United States. *Remarks* - The Court unanimously confirmed its position taken in *Harkins & Edwards* on the risk of a sentence of life imprisonment without parole in extradition matters re. applicants sought for extradition for the purpose of *prosecution* for the terrorism offences they allegedly have committed. - The judgment became definitive on 24 September 2012 after the Panel's refusal to refer the matter to the Grand Chamber.
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	*Circumstances:* Extradition of a UK national from Switzerland to the UK for the purpose of the execution of

No.: 28019/10 Type: Judgment Date: 10 April 2012 Articles: N: 5§1 Keywords: – extradition (rule of speciality) – rule of speciality Links: English only Translations: not available	the remainder of the sentence after having absconded. A 9-year prison sentence was imposed for the offence of conspiracy to cheat the public revenue. The person sought was also sentenced to a confiscation order. If the order was not paid within a certain delay, a prison sentence of 4 years was to be served in default of payment, consecutively to the nine-year term of imprisonment already imposed. The UK extradition request was not clear regarding whether it was also requested for the offence of absconding and for non-payment of the amount confiscated which were not punishable under Swiss law. The British authorities subsequently expressly stated that extradition was not requested for non-payment of the amount in the confiscation order. The Swiss extradition decision excluded the UK offence of absconding for lack of double criminality. *Relevant complaint:* After having been surrendered, the confiscation order was enforced, despite the Swiss extradition decision being limited to the execution of the remainder of the main prison sentence. This would amount to a violation of the speciality rule and as a consequence to illegal detention in violation of art. 5§1. *Court's conclusions:* Following the High Court's judgment, the Court concluded that the default term was an integral part of the confiscation order, which was in turn part of the original sentence and thus does not appear to be unreasonable or arbitrary. The execution of the default term of the confiscation order did not involve the bringing of any new "criminal charge" for the purposes of Article 6 § 1. In so far as there exists a dispute between the two States concerned regarding whether the specialty rule has been breached, the Court observes that the Extradition Convention does not contain a dispute resolution mechanism and considers that it is not for this Court to resolve what is essentially a diplomatic dispute. The Court does not allege bad faith or an intention to deceive in respect of the United Kingdom authorities. This was also the conclusion of the High Court's conclusion. At most, the applicant relies on a misunderstanding by the Swiss authorities of the position of the United Kingdom in the extradition proceedings. The Court considers that any such misunderstanding did not render the applicant's detention arbitrary in all the circumstances of the case.
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	*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

– custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – interim measure Links: English only Translations: not available	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	*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

– asylum – expulsion – family life (separation of family) – ill-treatment – in absentia – interim measure Links: English only Translations: not available	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 Keywords: – expulsion – ill-treatment Links: English only Translations: not available	*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 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	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for a military offence.

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 Translations: not available	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 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)	*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

– extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	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) – custody (length) – extradition (custody) Links: English only Translations: not available	*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 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	*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

Articles: N: 5§1, 5§4 Keywords: – asylum – custody (lawfulness) – custody (length) – extradition (custody) Links: English only Translations: not available	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 Articles: N: 3, 8 Keywords: – asylum – expulsion – family life (separation of family) – ill-treatment Links: English only Translations: not available	*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 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	*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'

Links: English only Translations: not available	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 Keywords: – expulsion – family life (separation of family) Links: English only Translations: not available	*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. *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.
Umirov v. Russia No.: 17455/11 Type: Judgment Date: 18 September 2012 Articles: Y: 3; N: 5§1 Keywords: – assurances – asylum – custody (lawfulness) – custody (length)	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for membership in an extremist religious organization of a person granted temporary asylum in Russia. Interim measure complied with. *Relevant complaints:* 1. The applicant's extradition to Uzbekistan would subject him to a real risk of ill-treatment. None of the Russian authorities had properly examined his claim that he would be exposed to a risk of being subjected to ill-treatment if extradited to Uzbekistan. Those authorities had only relied on the material obtained from the Russian governmental agencies. No attempt had been made to study reliable independent sources. 2. The applicant's detention had not been justified, as the extradition proceedings had not been and were not being pursued with the requisite diligence, in particular after the Court's indication of interim measure.

– extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	*Court's conclusions:* 1. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations. Consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the requesting country as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the requesting country and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. The weight to be attached to independent assessments must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3 of the Convention. As regards detainees in Uzbekistan, the available updated and reliable material confirmed the persisting serious issue concerning ill-treatment of detainees. Against this background, the Court notes the summary and unspecific reasoning adduced by the domestic authorities, and the Government before the Court, to dispel the alleged risk of ill-treatment on account of the above considerations, including the evident pre-existing adverse interest the Uzbek authorities had in the applicant. Furthermore, it is noted that the court conducting judicial review in the present case stated that the allegation of a risk of ill-treatment "in itself [was] not a reason for granting [the] challenge to the extradition order". In such circumstances, the Court doubts that the issue of the risk of ill-treatment was subject to rigorous scrutiny in the extradition case. No fair attempt was made at the domestic level to assess the materials originating from reliable sources other than those provided by the Russian public authorities. The Court finds unconvincing the national authorities' reliance, without any assessment or discussion, on assurances provided by Uzbekistan for dispelling the risk of ill-treatment. 2. The implementation of an interim measure following an indication by the Court to a State Party that it should not, until further notice, 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. In the present case, it has not been substantiated before the Court, after having raised related complaints before national courts, that the applicant's detention between May and November 2011 was unlawful under Russian law. The national court extended the applicant's detention with reference to the relevant legal grounds in terms of Russian law, namely the risk that the applicant would flee justice, if at large. Second, it should be taken into consideration that detention with a view to extradition in the present case was subject to the maximum statutory eighteen-month period. Indeed, at the expiry of such period, the applicant was released at the prosecutor's request. Lastly, there is no indication that the authorities acted in bad faith, that the applicant was detained in unsuitable conditions or that his detention was arbitrary for any other reason.
Rrapo v. Albania No.: 58555/10 Type: Judgment Date: 25 September 2012 Articles: Y: 34; N: 2, 3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Extradition from Albania to the United States of America for the purposes of prosecution that could result in imposition of death penalty. Interim measure not complied with. *Relevant complaints:* 1. The applicant's extradition to the United States, and the risk of being subjected to the death penalty, gave rise to a breach of Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13. He also questioned the quality of the assurances given by the United States authorities by way of diplomatic notes: the only responsible authority for giving such assurances should have been the Attorney General. 2. The applicant's extradition to the United States, in breach of the Court's indication of interim measure, gave rise to a violation of Article 34 of the Convention. *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. The Court finds nothing in the materials before it that could cast doubts as to the credibility of the assurances that capital punishment would not be sought or imposed in respect of the applicant by the requesting State. The assurances given by the United States Government were specific, clear and unequivocal. The Court must further attach importance to the fact that, in the context of an extradition request, there have been no reported breaches of an assurance given by the United States Government to a Contracting State. The United States long-term interest in honouring its extradition commitments alone would be sufficient to give rise to a presumption of good faith

	against any risk of a breach of those assurances. 2. The Court cannot accept the Government's argument that the failure to extradite the applicant would have interfered with Albania's international obligations under the 1935 Extradition Treaty. The Convention is intended to safeguard rights that are "practical and effective" and a respondent State is considered to retain Convention liability in respect of treaty commitment prior to or subsequent to the entry into force of the Convention. It is not open to a Contracting State to enter into an agreement with another State which conflicts with its obligations under the Convention. The fact that the harm which an interim measure was designed to prevent subsequently does not materialize, despite a State's failure to act in full compliance with the interim measure, is equally irrelevant for the assessment of whether the respondent State has fulfilled its obligations under Article 34 of the Convention. The Court rejects the Government's argument that the applicant's extradition was unavoidable given the imminent expiry of his period of detention and the absence of any alternative to his release. Neither the existing state of national law expounded by the Government, notably the alleged legal vacuum concerning the continuation of detention beyond the time-limit provided for in Article 499 of the CCP, nor deficiencies in the national judicial system and the difficulties encountered by the authorities in seeking to achieve their legislative and regulatory objectives, can be relied upon to the applicant's detriment, in the absence of a final domestic court judgment authorising his extradition, or avoid or negate the respondent State's obligations under the Convention. There is no indication that the authorities considered the possibility of taking any steps to remove the risk of the applicant's flight in the event of his release, by, for example, the imposition of other coercive forms of security measures provided for under the CCP. The authorities did not inform the Court, prior to the extradition, of the difficulties encountered by them in complying with the interim measure.
Abdulkhakov v. Russia No.: 14743/11 Type: Judgment Date: 2 October 2012 Articles: Y: 3, 5§1(f), 5§4, 34; N: 8, 5§1(f) Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness)	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for membership in a banned organization of a person seeking asylum in Russia, who has also been granted refugee status by the UNHCR. Interim measure not complied with because the applicant has been transferred to Tajikistan following his release from custody. *Relevant complaints:* 1. If extradited to Uzbekistan, the applicant's would be subjected to ill-treatment. The domestic authorities had not taken into account the evidence submitted by the applicant and had dismissed his fears as unsubstantiated without a thorough assessment of the general situation in Uzbekistan or his personal situation, relying on the diplomatic assurances provided by the Uzbek authorities. 2. From 9 December 2009 to 8 February 2010, the applicant had been detained without any judicial decision having authorized that detention. Moreover, the applicant submitted that the length of his detention had

– custody (length) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	been excessive and that the extradition proceedings had not been conducted with due diligence. In particular, although the extradition proceedings had been completed on 14 March 2011, he had not been released until 9 June 2011, after the expiry of the maximum detention period permitted under Russian law. 3. The applicant complained that his appeals against the detention orders of 7 September and 8 December 2010 had not been examined "speedily". *Court's conclusions:* 1. The applicant's situation is similar to those Muslims who, because they practiced their religion outside official institutions and guidelines, were charged with religious extremism or membership of banned religious organizations and, on this account, as noted in the reports and the Court's judgments, were at an increased risk of ill-treatment. It is also significant that the criminal proceedings against the applicant were opened in the immediate aftermath of terrorist attacks in the Fergana Valley in the summer of 2009. During the period immediately following those attacks, reputable international NGOs reported a wave of arbitrary arrests of Muslims attending unregistered mosques followed by their incommunicado detentions, charges of religious extremism or attempted overthrow of the constitutional order, and their ill-treatment to obtain confessions. In the Court's opinion, the fact that the charges against the applicant and the extradition request date from that period intensifies the risk of ill-treatment. An arrest warrant was issued in respect of the applicant, making it most likely that he will be immediately remanded in custody after his extradition and that no relative or independent observer will be granted access to him. It also takes into account that the office of the UN High Commissioner for Refugees granted him mandate refugee status after determining he had a well-founded fear of being persecuted and ill-treated if extradited to Uzbekistan. Against this background, the Court is persuaded that the applicant would be at a real risk of suffering ill-treatment if returned to Uzbekistan. The Court is struck by the summary reasoning adduced by the domestic courts and their refusal to assess materials originating from reliable sources. In such circumstances, the Court doubts that the issue of the risk of ill-treatment of the applicant was subject to rigorous scrutiny, either in the refugee status or the extradition proceedings. The Court notes that the assurances provided by the Uzbek authorities were couched in general stereotyped terms and did not provide for any monitoring mechanism. It finds unconvincing the authorities' reliance on such assurances, without their detailed assessment against the standards elaborated by the Court. 2. From 9 to 30 December 2009 the applicant was in a legal vacuum that was not covered by any domestic legal provision clearly establishing the grounds of his detention and the procedure and the time-limits applicable to that detention pending the receipt of an extradition request. The Court notes the absence of any precise domestic provisions establishing under which conditions, within which time-limit and by a

	prosecutor of which hierarchical level and territorial affiliation the issue of detention is to be examined after the receipt of an extradition request. Although the extradition request was received on 30 December 2009, it was not until 18 January 2010 that the prosecutor ordered the applicant's detention on the basis of Article 466§2 of the CCrP. During that entire period the applicant remained unaware of the grounds of his detention and the time-limit on that detention. The applicant's detention from 30 December 2009 to 8 February 2010 was based on a legal provision, namely Article 466§2 of the CCrP, which, due to a lack of clear procedural rules, was neither precise nor foreseeable in its application. As to the period of detention from 14 March to 9 June 2011, the Court notes that on 14 March 2011 the lawfulness of the extradition order was confirmed by the appeal court. Although the domestic extradition proceedings were thereby terminated, the applicant remained in custody for a further two months and twenty-six days. During this time the Government refrained from extraditing him in compliance with the interim measure indicated by the Court under Rule 39 of the Rules of Court. the Court is satisfied that the requirement of diligence was complied with in the present case and the overall length of the applicant's detention was not excessive. 3. The efficiency of the system of automatic periodic judicial review was undermined by the fact that a new relevant factor arisen in the interval between reviews and capable of affecting the lawfulness of the applicant's detention was assessed by a court with an unreasonably long delay. In such circumstances, the Court cannot but find that the reviews of the lawfulness of the applicant's detention were not held at "reasonable intervals".

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: – transfer of sentenced persons Links: English, French Translations: Georgian, Slovenian	*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 Type: Decision Date: 15 March 2005	*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. *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

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	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 persons (conversion of sentence)	*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 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

– transfer of sentenced persons (early release) Links: English only Translations: not available	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	*Circumstances:* Transfer of a Czech national from Germany to the Czech Republic under Article 3 of the Additional Protocol.

Type: Decision Date: 6 September 2011 Articles: N: 7 Keywords: – transfer of sentenced persons (Additional Protocol, Article 3) Links: English only Translations: not available	*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: – 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*

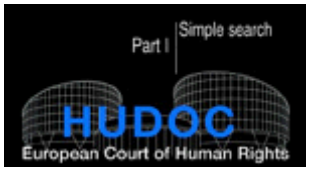
G. The HUDOC database

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].

A video showing the main search functions of the HUDOC database is available at the Court's website:



HUDOC tutorial

The tutorial explains how to carry out a simple search of the Court's case-law.

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