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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

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

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

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

31 October 2011

NOTES:        *In the index of keywords (A), the keywords are arranged alphabetically, as well as the cases related to each keyword.*  
                  *In the lists of cases relevant for each European convention are arranged chronologically*  
                  *Links to the texts of the Court's decision work only if clicked while pressing the <Ctrl> key.*  
                  *Further decisions of the Court can be found in the HUDOC database (see below sub G).*

### **A. Index of keywords with relevant case law:**

<b>Keyword</b>	<b>Case Title</b>	<b>Application No.</b>
Additional Protocol, Article 2 – see <i>transfer of sentenced persons (Additional Protocol, Article 2)</i>		
Additional Protocol, Article 3 – see <i>transfer of sentenced persons (Additional Protocol, Article 3)</i>		
admissibility of evidence – see <i>mutual assistance (admissibility of evidence)</i>		
assurances	Abdulazhon Isakov v. Russia	14049/08
	Al-Moayad v. Germany	35865/03
	Babar Ahmad and others v. United Kingdom	24027/07, 11949/08 & 36742/08
	Baysakov and others v. Ukraine	54131/08
	Ben Khemais v. Italy	246/07
	Chahal v. United Kingdom	22414/93
	Chentiev and Ibragimov v. Slovakia	21022/08 & 51946/08
	Gasayev v. Spain	48514/06
	Mamatkulov and Askarov v. Turkey	46827/99 & 46951/99
	Saadi v. Italy	37201/06
	Shamayev and others v. Georgia and Russia	36378/02
	Soering v. United Kingdom	14038/88
	Soldatenko v. Ukraine	2440/07
	Toumi v. Italy	25716/09
	Trabelsi v. Italy	50163/08
asylum	Eminbeyli v. Russia	42443/02
	Mamatkulov and Askarov v. Turkey	46827/99 & 46951/99
conversion of sentence – see <i>transfer of sentenced persons (conversion of sentence)</i>		
cruel treatment ( <i>see ill-treatment</i> )		
custody (judicial review)	Abdulazhon Isakov v. Russia	14049/08
	Chahal v. United Kingdom	22414/93
	Elmuratov v. Russia	66317/09
	Eminbeyli v. Russia	42443/02

	Farmakopoulos v. Belgium,	11683/85
	Garabayev v. Russia	38411/02
	Ismoilov and others v. Russia	2947/06
	Khudyakova v. Russia	13476/04
	Kolompar v. Belgium	11613/85
	Lynas v. Switzerland	7317/75
	Nasrulloev v. Russia	656/06
	Öcalan v. Turkey	46221/99
	Sanchez-Reisse v. Switzerland	9862/82
	Shamayev and others v. Georgia and Russia	36378/02
	Shchebet v. Russia	16074/07
	Soldatenko v. Ukraine	2440/07
	Stephens v. Malta	11956/07
custody (lawfulness)	Abdulazhon Isakov v. Russia	14049/08
	Al-Moayad v. Germany	35865/03
	Bozano v. Switzerland	9009/80
	Chahal v. United Kingdom	22414/93
	Elmuratov v. Russia	66317/09
	Eminbeyli v. Russia	42443/02
	Garabayev v. Russia	38411/02
	Ismoilov and others v. Russia	2947/06
	Lynas v. Switzerland	7317/75
	Khudyakova v. Russia	13476/04
	Kolompar v. Belgium	11613/85
	Nasrulloev v. Russia	656/06
	Öcalan v. Turkey	46221/99
	Rantsev v. Cyprus and Russia	25965/04
	Shamayev and others v. Georgia and Russia	36378/02
	Shchebet v. Russia	16074/07
	Soldatenko v. Ukraine	2440/07
	Stephens v. Malta	11956/07
custody (length)	Abdulazhon Isakov v. Russia	14049/08
	Chahal v. United Kingdom	22414/93
	Khudyakova v. Russia	13476/04
	Kolompar v. Belgium	11613/85
	Lynas v. Switzerland	7317/75
	Quinn v. France	18580/91
	Stephens v. Malta	11956/07
custody (right to be informed of the reasons for arrest)	Eminbeyli v. Russia	42443/02
	Khudyakova v. Russia	13476/04

	Shamayev and others v. Georgia and Russia	36378/02
death penalty	Babar Ahmad and others v. United Kingdom	24027/07, 11949/08 & 36742/08
	Baysakov and others v. Ukraine	54131/08
	Chentiev and Ibragimov v. Slovakia	21022/08 & 51946/08
	Gasayev v. Spain	48514/06
	Öcalan v. Turkey	46221/99
	Shamayev and others v. Georgia and Russia	36378/02
	Soering v. United Kingdom	14038/88
discrimination	Veermäe v. Finland	38704/03
early release – see <i>transfer of sentenced persons (early release)</i>		
expulsion	Ben Khemais v. Italy	246/07
	Bozano v. Switzerland	9009/80
	Chahal v. United Kingdom	22414/93
	Cruz Varas v. Sweden	15576/89
	Nasri v. France	19465/92
	Öcalan v. Turkey	46221/99
	Saadi v. Italy	37201/06
	Toumi v. Italy	25716/09
	Trabelsi v. Italy	50163/08
	Veermäe v. Finland	38704/03
extradition (custody)	Abdulazhon Isakov v. Russia	14049/08
	Al-Moayad v. Germany	35865/03
	Eminbeyli v. Russia	42443/02
	Farmakopoulos v. Belgium,	11683/85
	Garabayev v. Russia	38411/02
	Ismoilov and others v. Russia	2947/06
	Khudyakova v. Russia	13476/04
	Kolompar v. Belgium	11613/85
	Nasrulloev v. Russia	656/06
	Lynas v. Switzerland	7317/75
	Öcalan v. Turkey	46221/99
	Quinn v. France	18580/91
	Sanchez-Reisse v. Switzerland	9862/82
	Shamayev and others v. Georgia and Russia	36378/02
	Shchebet v. Russia	16074/07
	Soldatenko v. Ukraine	2440/07
	Stephens v. Malta	11956/07
extradition (documents in support of)	Lynas v. Switzerland	7317/75
extradition (effective remedies)	Abdulazhon Isakov v. Russia	14049/08
	Baysakov and others v. Ukraine	54131/08

extradition (grounds for refusal)	Elmuratov v. Russia	66317/09
	Garabayev v. Russia	38411/02
	Shamayev and others v. Georgia and Russia	36378/02
	Abdulazhon Isakov v. Russia	14049/08
	Al-Moayad v. Germany	35865/03
	Babar Ahmad and others v. United Kingdom	24027/07, 11949/08 & 36742/08
	Baysakov and others v. Ukraine	54131/08
	Chentiev and Ibragimov v. Slovakia	21022/08 & 51946/08
	Elmuratov v. Russia	66317/09
	Garabayev v. Russia	38411/02
	Gasayev v. Spain	48514/06
	Ismoilov and others v. Russia	2947/06
	Mamatkulov and Askarov v. Turkey	46827/99 & 46951/99
	Shamayev and others v. Georgia and Russia	36378/02
	Soering v. United Kingdom	14038/88
	Soldatenko v. Ukraine	2440/07
extradition (rule of speciality)	Sergey Zolotukhin v. Russia	14939/03
fair trial	Al-Moayad v. Germany	35865/03
	A. M. v. Italy	37019/97
	Babar Ahmad and others v. United Kingdom	24027/07, 11949/08 & 36742/08
	János Csoszánzski v. Sweden	22318/02
	Lynas v. Switzerland	7317/75
	Mamatkulov and Askarov v. Turkey	46827/99 & 46951/99
	Marcello Viola v. Italy	45106/04
	Öcalan v. Turkey	46221/99
	Selmouni v. France	25803/94
	Smith v. Germany	27801/05
	Solakov v. FYROM	47023/99
	Somogyi v. Italy	67972/01
	Stojkovic v. France and Belgium	25303/08
	Van Ingen v. Belgium	9987/03
	Veermäe v. Finland	38704/03
	Zhukovskiy v. Ukraine	31240/03
family life (separation of family)	Cruz Varas v. Sweden	15576/89
	Nasri v. France	19465/92
hearing witnesses – see <i>mutual assistance (hearing witnesses)</i>		
ill-treatment <sup>1</sup>	Abdulazhon Isakov v. Russia	14049/08
	Al-Moayad v. Germany	35865/03

<sup>1</sup>) Keyword “ill-treatment” includes torture and other forms of cruel or inhumane treatment covered by Article 3 of the Convention.

	Babar Ahmad and others v. United Kingdom	24027/07, 11949/08 & 36742/08
	Baysakov and others v. Ukraine	54131/08
	Ben Khemais v. Italy	246/07
	Chahal v. United Kingdom	22414/93
	Chentiev and Ibragimov v. Slovakia	21022/08 & 51946/08
	Cruz Varas v. Sweden	15576/89
	Elmuratov v. Russia	66317/09
	Garabayev v. Russia	38411/02
	Gasayev v. Spain	48514/06
	Groni v. Albania	25336/04
	Ismoilov and others v. Russia	2947/06
	Khudyakova v. Russia	13476/04
	Lynas v. Switzerland	7317/75
	Mamatkulov and Askarov v. Turkey	46827/99 & 46951/99
	Saadi v. Italy	37201/06
	Sami Memis v. Germany	10499/83
	Selmouni v. France	25803/94
	Shamayev and others v. Georgia and Russia	36378/02
	Shchebet v. Russia	16074/07
	Soering v. United Kingdom	14038/88
	Soldatenko v. Ukraine	2440/07
	Toumi v. Italy	25716/09
	Trabelsi v. Italy	50163/08
	Veermäe v. Finland	38704/03
inhumane treatment – see <i>ill-treatment</i>		
interim measure	Al-Moayad v. Germany	35865/03
	Ben Khemais v. Italy	246/07
	Cruz Varas v. Sweden	15576/89
	Groni v. Albania	25336/04
	Mamatkulov and Askarov v. Turkey	46827/99 & 46951/99
	Shamayev and others v. Georgia and Russia	36378/02
	Toumi v. Italy	25716/09
	Trabelsi v. Italy	50163/08
international validity of criminal judgments – see <i>transfer of enforcement of sentence</i>		
lawfulness of custody – see <i>custody (lawfulness)</i>		
length of custody – see <i>custody (length)</i>		

life sentence <sup>2</sup>	Babar Ahmad and others v. United Kingdom	24027/07, 11949/08 & 36742/08
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)	A. M. v. Italy	37019/97
	Marcello Viola v. Italy	45106/04
	Solakov v. FYROM	47023/99
	Stojkovic v. France and Belgium	25303/08
	Zhukovskiy v. Ukraine	31240/03
mutual assistance (service of documents)	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	Sergey Zolotukhin v. Russia	14939/03
	Veermäe v. Finland	38704/03
non bis in idem – see <i>ne bis in idem</i>		
nullum crimen sine lege – see <i>nulla poena sine lege</i>		
nulla poena sine lege	János Csoszánzski v. Sweden	22318/02
obligation to investigate – see <i>obligation to prosecute</i>		
obligation to prosecute <sup>3</sup>	Rantsev v. Cyprus and Russia	25965/04
parole – see <i>transfer of sentenced persons (early release)</i>		
presumption of innocence	Ismoilov and others v. Russia	2947/06
release on parole – see <i>transfer of sentenced persons (early release)</i>		
res iudicata – see <i>ne bis in idem</i>		
separation of family – see <i>family life (separation of family)</i>		
service of documents – see <i>mutual assistance (service of documents)</i>		
torture – see <i>ill-treatment</i>		
right of access to court	Smith v. Germany	27801/05
transfer of enforcement of sentence <sup>4</sup>	Garkavyi v. Ukraine	25978/07
	Groni v. Albania	25336/04
transfer of proceedings	Garkavyi v. Ukraine	25978/07
transfer of sentenced persons	Selmouni v. France	25803/94
	Smith v. Germany	27801/05

<sup>2</sup>) Keyword “life sentence” includes also other forms of extremely long sentences.

<sup>3</sup>) Keyword “obligation to prosecute” means also “obligation to investigate”.

<sup>4</sup>) 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 (Additional Protocol, Article 2)	Garkavyy v. Ukraine	25978/07
transfer of sentenced persons (Additional Protocol, Article 3)	János Csoszánzski v. Sweden	22318/02
	Veermäe v. Finland	38704/03
transfer of sentenced persons (conversion of sentence)	János Csoszánzski v. Sweden	22318/02
	Veermäe v. Finland	38704/03
transfer of sentenced persons (early release)	János Csoszánzski v. Sweden	22318/02
	Veermäe v. Finland	38704/03
videoconference – see <i>mutual assistance (videoconference)</i>		



**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)**

<b>Case Title, Application No., Type, Date, Link</b>	<b>Relevance</b>	<b>Articles (ECHR)</b>	<b>Keywords</b>
Lynas v. Switzerland 7317/75 Decision 6 July 1976 <a href="#">Link</a>	"Moreover the Commission notes by way of example that the European Convention on Extradition elaborated within the Council of Europe in no way obliges the authorities of the requested State to authorise the production before them of evidence of facts relating to the substance of the charge or the criminal prosecution."	N: 2, 3, 5§1(f), 5§3, 5§4, 6§1, 18	custody (judicial review) custody (lawfulness) custody (length) extradition (custody) extradition (documents in support of) fair trial ill-treatment
Bozano v. Switzerland 9009/80 Decision 12 July 1984 <a href="#">Link</a>	The Court notes that the Swiss authorities were bound by this convention and that there was no misuse of power and thus no breach of the ECHR.	N: 5, 18	custody (lawfulness) expulsion
Sanchez-Reisse v. Switzerland 9862/82 Judgment 21 October 1986 <a href="#">Link</a>	"The Court considers that the intervention of the Office did not impede the applicant's access to the Federal Court or limit the latter's power of review. Moreover, it may meet a legitimate concern: 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."	Y: 5§4	custody (judicial review) extradition (custody)
Soering v. United Kingdom 14038/88 Judgment 7 July 1989 <a href="#">Link</a>	Extradition that leads to inhumane conditions (like death row) is breach of Article 3, but the beneficial purpose of extradition in preventing fugitive offenders from evading justice cannot be ignored in determining the scope of application of the Convention and of Article 3 (art. 3) in particular: the Convention doesn't apply to the full extent.	Y: 3  N: 6§3(c), 6§1, 6§3(d), 13	assurances death penalty extradition (grounds for refusal) ill-treatment
Farmakopoulos v. Belgium, 11683/85 Judgment 4 December 1990 <a href="#">Link</a>	struck out from the list  <i>Considering that the Court itself made no decision on the merits, relevance is questionable.</i>		custody (judicial review) extradition (custody)
Cruz Varas v.	In case of expulsion, a breach of Article 8 might be	N: 3, 8, 25§1	expulsion

Sweden 15576/89 Judgment 20 March 1991 <a href="#">Link</a>	established if there would be obstacles to establishing family life in the requesting country.		family life (separation of family) ill-treatment interim measure
Kolompar v. Belgium 11613/85 Judgment 24 September 1992 <a href="#">Link</a>	"... when the applicant's conviction in Belgium became final ..., the Minister of Justice found that the applicant had already served the prison term which he had received..." [by serving the custody pending extradition].	N: 5§1, 5§4	custody (judicial review) custody (lawfulness) custody (length) extradition (custody)
Quinn v. France 18580/91 Judgment 22 March 1995 <a href="#">Link</a>	If too long, a detention with a view on extradition can become a "pre-trial in disguise" which is a breach of Article 5 §1.	Y: 5§1 N: 5§3	custody (length) extradition (custody)
Nasri v. France 19465/92 Judgment 13 July 1995 <a href="#">Link</a>	"In view of this accumulation of special circumstances, notably his 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 deport the applicant, if executed, would not be proportionate to the legitimate aim pursued. It would infringe the right to respect for family life and therefore constitute a breach of Article 8 (art. 8)."	Y: 8	expulsion family life (separation of family)
Chahal v. United Kingdom 22414/93 Judgment 15 November 1996 <a href="#">Link</a>	"...it is necessary for the Court to evaluate the risk of his being ill-treated with reference to conditions throughout India rather than in Punjab alone."	Y: 3, 5§4, 13 N: 5§1	assurances custody (judicial review) custody (lawfulness) custody (length) expulsion ill-treatment
Öcalan v. Turkey 46221/99 Judgment 14 February 2000 <a href="#">Link</a>	"The Convention contains no provisions concerning the circumstances in which extradition may be granted, or the procedure to be followed before extradition may be granted. 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." (§ 89)	Y: 3, 5§3, 5§4, 6§1, 6§3(b)(c) N: 2, 5§1, 14, 34	custody (judicial review) custody (lawfulness) death penalty expulsion extradition (custody) fair trial
Mamatkulov and Askarov v. Turkey	Substantial evidence is needed to prove that an applicant faces violation of Article 3 after extradition. Failure to	Y: 34	assurances asylum

46827/99 & 46951/99 Judgment 4 February 2005 <a href="#">Link</a>	comply with interim measures pending the procedure is a breach of Article 34.	N: 3, 6§1	extradition (grounds for refusal) fair trial ill-treatment interim measure
Bordovskiy v. Russia 49491/99 Judgment 8 February 2005 <a href="#">Link</a>	"Article 5 § 1 (f) of the Convention does not require domestic law to provide a time-limit for detention pending extradition proceedings. However, if the proceedings are not conducted with the requisite diligence, the detention may cease to be justifiable under that provision."	N: 5§1, 5§2, 5§4	extradition (custody) custody (judicial review) custody (lawfulness) custody (length) custody (right to be informed of the reasons for arrest)
Shamayev and others v. Georgia and Russia 36378/02 Judgment 14 April 2005 <a href="#">Link</a>	<p>The Court examines the relation between death penalty and torture, the test to be applied to determine the real risk of torture and sufficiency of assurances provided by the requesting State vis-à-vis the treatment of the persons sought if extradited.</p> <p>"Whatever the truth, there is nothing in the evidence before it which enables the Court to consider the applicants as warlords, political figures or individuals who were well-known for other reasons in their country ..., all factors which could have served to render tangible or increase the personal risk hanging over the applicants after they had been handed over to the Russian authorities. Thus ... the evidence ... 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 ..., especially as the Georgian authorities had obtained assurances from their Russian counterparts against even that possibility... [I]n respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3"</p> <p>"The Court notes that ... pre-trial detention and the applicants' detention pending the extradition proceedings had partly overlapped... It considers that the fact that proceedings were conducted concurrently cannot in itself warrant the conclusion that there was abuse, for purposes</p>	<p>Y: 3, 5§2, 5§4, 13, 34, 38§1(a)</p> <p>N: 2, 3, 5§1</p>	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

	relating to national law, of the extradition procedure..." Furthermore, the Court describes the manner in which Rule 39 is applied by the Court itself in practice and corresponding obligations of States Parties.		
Al-Moayad v. Germany 35865/03 Decision 20 February 2007 <a href="#">Link</a>	<p>The case concerns a person who had been lured (tricked into) to come from Yemen to Germany by undercover agents of the United States and subsequently extradited from Germany to the United States.</p> <p>"In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment... The Court further observes that, having regard to the fact that Article 3 enshrines one of the most fundamental values of a democratic society and prohibits in absolute terms torture or inhuman or degrading treatment or punishment, a rigorous scrutiny must necessarily be conducted of an individual's claim that his or her deportation to a third country will expose that individual to treatment prohibited by Article 3..."</p> <p>"As regards extradition arrangements between States when one is a party to the Convention and the other not, the rules established by an extradition treaty or, in the absence of any such treaty, the cooperation between the States concerned for the purpose of bringing fugitive offenders to justice are also relevant factors to be taken into account for determining whether the arrest that has led to the subsequent complaint to the Court was lawful. The fact that a fugitive has been handed over as a result of cooperation between States does not in itself make the arrest unlawful or, therefore, give rise to any problem under Article 5... However, given that "lawfulness" also implies absence of any arbitrariness, extra-territorial measures of a respondent State resulting in the applicant's detention which entailed clear violations of international law, for instance in the case of forcing an applicant against his will to enter the respondent State in a manner that is inconsistent with the sovereignty of his host State, raise an issue under Article 5 § 1 of the Convention..."</p>	N: 3, 5§1, 6§1, 34	<p>assurances</p> <p>custody (lawfulness)</p> <p>extradition (custody)</p> <p>extradition (grounds-for refusal)</p> <p>fair trial</p> <p>ill-treatment</p> <p>interim measure</p>

Nasrulloev v. Russia 656/06 Judgment 11 October 2007 <a href="#">Link</a>	"The provisions of the Russian law governing detention of persons with a view to extradition were neither precise nor foreseeable in their application and fell short of the "quality of law" standard required under the Convention" (§ 77): violation of Article 5 (f).	Y: 5§1(f), 5§4	custody (judicial review) custody (lawfulness) extradition (custody)
Saadi v. Italy 37201/06 Judgment 28 February 2008 <a href="#">Link</a>	"Article 3, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment, enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15, even in the event of a public emergency threatening the life of the nation... As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victim's conduct..., the nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3..."	Y: 3	assurances expulsion ill-treatment
Ismoilov and others v. Russia 2947/06 Judgment 24 April 2008 <a href="#">Link</a>	The applicants did not have at their disposal any procedure for judicial review of its lawfulness. There has therefore been a violation of Article 5 § 4 of the Convention. Also, an extradition decision may raise an issue under Article 6 § 2 if the wording <i>de facto</i> amounts to holding the extraditee guilty of the crime	Y: 3, 5§1, 5§4, 6§2	custody (judicial review) custody (lawfulness) extradition (custody) extradition (grounds for refusal) ill-treatment presumption of innocence
Garabayev v. Russia 38411/02 Judgment 7 June 2008 <a href="#">Link</a>	"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 unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account..."	Y: 3, 5§1(f), 5§3, 5§4, 13	custody (judicial review) custody (lawfulness) extradition (custody) extradition (effective remedies) extradition (grounds for refusal) ill-treatment
Shchebet v. Russia 16074/07 Judgment 12 June 2008 <a href="#">Link</a>	"A similar provision can be found in Article 16 of the European Convention on Extradition, which establishes that provisional arrest of the person whose extradition is sought shall be decided upon by the requested Party in accordance with its law. Thus, the international instrument required in the first place compliance with the domestic procedure which, as the Court has found above, had been	Y: 3, 5§1, 5§4	custody (judicial review) custody (lawfulness) extradition (custody) ill-treatment

	breached [by Russia]" (§ 67).		
Soldatenko v. Ukraine 2440/07 Judgment 23 October 2008 <a href="#">Link</a>	The Court concludes that Ukrainian legislation does not provide for a procedure that is sufficiently accessible, precise and foreseeable in its application to avoid the risk of arbitrary detention pending extradition. Therefore, there is a violation of Article 5.1 (f). The Court also in detail describes the test that must be applied to determine the possibility of violation of Article 3 if extradition would be effected.	Y: 3, 5§1(f), 5§4, 13	assurances custody (judicial review) custody (lawfulness) extradition (custody) extradition (grounds for refusal) ill-treatment
Khudyakova v. Russia 13476/04 Judgment 8 January 2009 <a href="#">Link</a>	The Court uses Article 16 of this convention to explain the requirement of provisional arrest and detention.	Y: 5§1(f), 5§4 N: 3, 5§2, 6§2, 8, 12	custody (judicial review) custody (lawfulness) custody (length) custody (right to be informed of the reasons for arrest) extradition (custody) ill-treatment
Sergey Zolotukhin v. Russia 14939/03 Judgment 10 February 2009 <a href="#">Link</a>	The notion of same facts/same offence is taken into consideration in relation to ne bis in idem, which is relevant also as to the rule of specialty.	Y: 4 (Prot. 7)	extradition (rule of specialty) ne bis in idem
Gasayev v. Spain 48514/06 Decision 17 February 2009 <a href="#">Link</a>	The Court has accepted as sufficient diplomatic assurances provided by the requesting State vis-à-vis the treatment of the person sought after his extradition.	N: 2, 3	assurances death penalty extradition (grounds for refusal) ill-treatment
Ben Khemais v. Italy 246/07 Judgment 24 February 2009 <a href="#">Link</a>	Assurances not provided by an authority competent to do so and information on practice with regards to and approach of Tunisian authorities to terrorism suspects proves the assurances provided unreliable anyway.	Y: 3, 34	assurances expulsion ill-treatment interim measure
Eminbeyli v. Russia 42443/02 Judgment 26 February 2009 <a href="#">Link</a>	"The Court reiterates that for the detention to meet the standard of "lawfulness", it must have a basis in domestic law by support from Article 16 § 1 of the European Convention on Extradition."	Y: 5§1(f), 5§4 N: 3, 5§2, 6, 13	asylum custody (judicial review) custody (lawfulness) custody (right to be informed of the reasons for arrest) extradition (custody)
Stephens v. Malta 11956/07 Judgment	"By setting in motion a request for the applicant's detention pending extradition, the responsibility lays with [the requesting State] to ensure that the arrest warrant	Y: 5§1 N: 5§4, 7, 13	custody (judicial review) custody (lawfulness) custody (length)

21 April 2009 <a href="#">Link</a>	and extradition request [are] valid as a matter of [its] law, both substantive and procedural" (§ 52). Detention in the requested state engages the responsibility of the requesting state if the detention is a result from an extradition request.		extradition (custody)
Baysakov and others v. Ukraine 54131/08 Judgment 8 February 2010 <a href="#">Link</a>	In cases raising issues concerning Article 6 (free trial in requesting State), it did not find it necessary to examine complaints of this risk of a flagrant denial of justice in case of extradition, if such extradition has already been held to be contrary to Article 3 of the Convention. The Court also concluded that the applicants were not afforded an effective and accessible remedy in relation to their complaints under Article 3 of the Convention. There has accordingly been a violation of Article 13 of the Convention.	Y: 3, 13 N: 2	assurances death penalty extradition (effective remedies) extradition (grounds for refusal) ill-treatment
Trabelsi v. Italy 50163/08 Judgment 13 April 2010 <a href="#">Link</a>	Assurances not provided by an authority competent to do so and information on practice with regards to and approach of Tunisian authorities to terrorism suspects proves the assurances provided unreliable anyway.	Y: 3, 34	assurances expulsion ill-treatment interim measure
Babar Ahmad and others v. United Kingdom 24027/07, 11949/08 & 36742/08 Decision 6 July 2010 <a href="#">Link</a>	"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... However, as the Government have observed, the existence of assurances does not absolve a Contracting State from its obligation to consider their practical application." The Court also addresses the question of life sentences and very long sentences in light of Article 3.	Y: 3 N: 2, 3, 5, 6, 8, 14	assurances death penalty extradition (grounds for refusal) fair trial ill-treatment life sentence
Abdulazhon Isakov v. Russia 14049/08 Judgment 8 July 2010	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.	Y: 3, 5§1, 5§4, 13	assurances custody (judicial review) custody (lawfulness) custody (length) extradition (custody)



<a href="#">Link</a>	Accordingly, the applicant's forcible return to Uzbekistan would give rise to a violation of Article 3 as he would face a serious risk of being subjected to torture or inhuman or degrading treatment there.		extradition (effective remedies) extradition (grounds for refusal) ill-treatment nationality
Chentiev and Ibragimov v. Slovakia 21022/08 & 51946/08 Decision 14 September 2010 <a href="#">Link</a>	The Court has accepted as sufficient diplomatic assurances provided by the requesting State vis-à-vis the treatment of the persons sought after their extradition.	N: 2, 3	assurances death penalty extradition (grounds for refusal) ill-treatment
Elmuratov v. Russia 66317/09 Judgment 3 March 2011 <a href="#">Link</a>	"Reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition" (§ 82). The applicant failed to substantiate his allegations that his extradition to Uzbekistan would be in violation of Article 3 of the Convention.	Y: 5§1(f), 5§4 N: 3, 13	custody (judicial review) custody (lawfulness) extradition (effective remedies) extradition (grounds for refusal) ill-treatment
Toumi v. Italy 25716/09 Judgment 5 April 2011 <a href="#">Link</a>	Diplomatic assurances found unreliable on the basis of general information on practice with regards to and approach of Tunisian authorities to terrorism suspects.	Y: 3, 34	assurances expulsion ill-treatment interim measure
Sami Memis v. Germany 10499/83  <a href="#">Link</a>	<i>Decision not available in HUDOC or anywhere else. Seems to be quoted only in the article "Applying the European Convention on Human Rights to Extradition: Opening Pandora's Box?" by Christine van den Wyngaert.</i>	N: 3	ill-treatment



**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)**

<b>Case Title, Application No., Type, Date</b>	<b>Relevance</b>	<b>Articles (ECHR)</b>	<b>Keywords</b>
A. M. v. Italy 37019/97 14 December 1999 Judgment <a href="#">Link</a>	“... all the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence; as a general rule, paragraphs 1 and 3 (d) of Article 6 require that the defendant 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... In particular, the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 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... The Court notes that 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. As to the fact that the applicant could have requested the examination of the witnesses under the Mutual Assistance Treaty, 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... 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. He therefore did not have a fair trial and there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (d).”	Y: 6§1, 6§3(d)	fair trial mutual assistance (admissibility of evidence) mutual assistance (hearing witnesses)
Solakov v. FYROM 47023/99 31 October 2001	“The Court notes that the addresses of the two witnesses, who lived either in Bulgaria or the United States, were unknown. Accordingly, it would have been difficult to	N: 6§1, 6§3(d)	fair trial mutual assistance (admissibility of evidence)

Judgment <a href="#">Link</a>	summon them. Having regard to the reasons invoked by the applicant for hearing these witnesses..., the Court finds that the refusal to hear them in the prevailing circumstances was not as such contrary to Article 6 § 3 (d) of the Convention.”		mutual assistance (hearing witnesses)
Somogyi v. Italy 67972/01 Judgment 18 May 2004 <a href="#">Link</a>	The Court 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, in this case a difference between Italy and Hungary concerning the interpretation and application of the Convention on Mutual Assistance in Criminal Matters.	Y: 6	fair trial mutual assistance (service of documents)
Marcello Viola v. Italy 45106/04 Judgment 5 October 2006 <a href="#">Link</a>	The applicant's participation by videoconference in the appeal hearings during the proceedings did not put the defence at a substantial disadvantage. Audiovisual methods are allowed to hear witnesses under (inter alia) the Convention on Mutual Assistance.	N: 6	fair trial mutual assistance (hearing witnesses) mutual assistance (videoconference)
Van Ingen v. Belgium 9987/03 Judgment 13 May 2008 <a href="#">Link</a>	The applicant, Antoine van Ingen, is a Belgian national who was born in 1971 and lives in Lanaken (Belgium). Following the opening of an investigation in the United States in relation to international drug trafficking, the applicant was charged in Belgium and in June 2002 was sentenced by the Antwerp Court of Appeal to seven years' imprisonment for trafficking in ecstasy. He complained of the refusal by the Court of Appeal to reopen the proceedings to give the prosecution the opportunity to adduce new evidence transmitted by the American authorities in May 2002. Relying on Article 6 § 1 (right to a fair hearing), he alleged that that circumstance had prevented him from presenting his case effectively. The Court considered that the applicant had not indicated how the new evidence could have assisted in changing the verdicts against him by the Belgian courts if it had been adduced in the proceedings before them. It further noted that the prosecution did not appear to have relied on the evidence contained in the documents. In conclusion, it considered that the proceedings had observed the adversarial principle and equality of arms and had incorporated adequate safeguards to protect the interests of the accused. It held by six votes to one that there had	N: 6§1	fair trial mutual assistance (admissibility of evidence)

	been no violation of Article 6 § 1.		
Rantsev v. Cyprus and Russia 25965/04 Judgment 7 January 2010 <a href="#">Link</a>	The Court finds that there has been a procedural violation of Article 2 of the Convention as regards the failure of the Cypriot authorities to conduct an effective investigation into the death of a Russian national. Under the Mutual Assistance Convention, a legal assistance request from Cyprus to Russia was possible.	Y: 2, 4, 5§1	custody (lawfulness) mutual assistance obligation to prosecute
Zhukovskiy v. Ukraine 31240/03 Judgment 3 March 2011 <a href="#">Link</a>	The Russian authorities examined different ways of obtaining the statements and opted for the questioning of the witnesses in the Russian Federation through the international legal assistance mechanism. However, the courts did not hear the direct evidence of these witnesses and the applicant had no opportunity to cross-examine them.	Y: 6§1, 6§3(d)	fair trial mutual assistance (admissibility of evidence) mutual assistance (hearing witnesses)
Stojkovic v. France and Belgium 25303/08 Judgment 27 October 2011 <a href="#">Link</a>	The case concerned the right of a suspect to be assisted by a lawyer when first questioned by Belgian police officers acting under an international letter of request issued by a French judge, who was present at the interview. The Court declared the application inadmissible in so far as it was lodged against Belgium and declared it admissible in respect of France. The Court held, unanimously, that there had been: a violation of Article 6 § 3 (c) (right to legal assistance) of the European Convention on Human Rights taken together with Article 6 § 1 (right to a fair hearing) of the Convention.	Y: 6§1, 6§3(c)	fair trial mutual assistance (hearing witnesses)

**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)**

<b>Case Title, Application No., Type, Date</b>	<b>Relevance</b>	<b>Articles (ECHR)</b>	<b>Keywords</b>
Selmouni v. France 25803/94 Judgment 28 July 1999 <a href="#">Link</a>	With regards to Article 41, a request of transfer (after a violation of the Convention has been established), does not fall under the jurisdiction of the Court Article 41.	Y: 3, 6§1	fair trial ill-treatment transfer of sentenced persons
Veermäe v. Finland 38704/03 Decision 15 March 2005 <a href="#">Link</a>	“The European Convention on Human Rights does not require the Contracting Parties to impose its standards on third States or territories. To lay down a strict requirement that the sentence served in the administering country should not exceed the sentence that would have to be served in the sentencing country would also thwart the current trend towards strengthening international cooperation in the administration of justice, a trend which is reflected in the Transfer Convention and is in principle in the interests of the persons concerned... In view of this, 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... The Court does not exclude the possibility that a flagrantly longer de facto sentence in the administering State could give rise to an issue under Article 5, and hence engage the responsibility of the sentencing State under that Article. For this to be the case, however, substantial grounds would have to be shown to exist for believing that the time to be served in the administering State would be flagrantly disproportionate to the time which would have had to be served in the sentencing State.”	N: 3, 5, 6, 14; 4 (Prot. 7)	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)
János Csoszánzski v. Sweden 22318/02 Decision 27 June 2006 <a href="#">Link</a>	The applicant complained that his transfer from Sweden to Hungary with a view to serving the remainder of his sentence there resulted in a de facto sixteen-month increase in his term of imprisonment and thus contrary to Article 5, 6 and 7 of the Convention. Sweden based itself on Article 3 of the Additional protocol to the Transfer	N: 5, 6, 7	fair trial nulla poena sine lege transfer of sentenced persons (Additional Protocol, Article 3) transfer of sentenced persons (conversion of sentence)

	Convention and Article 11 of the Transfer Convention. According to the Court, this is not a violation of either Article 5 or 6: the longer de facto term of imprisonment in Hungary is not so disproportionate that it will involve a breach of Article 5, and the additional period of imprisonment resulting from the applicant's transfer is not a consequence of his having received a penalty in new criminal or disciplinary proceedings that would involve a breach of Article 6 or 7.		transfer of sentenced persons (early release)
Garkavyy v. Ukraine 25978/07 Judgment 18 February 2010 <a href="#">Link</a>	Ukraine 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 Czech Republic 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 <i>in absentia</i> . The Court is not convinced that such solution chosen by the domestic courts meets the requirements of foreseeability and lawfulness. The Court accordingly finds that since 16 June 2006 the applicant has been detained in breach of Article 5 § 1 of the Convention." (§ 76, 77). Thus: breach of Article 5§1.	Y: 5§1	international validity of criminal judgments transfer of enforcement of sentence transfer of proceedings transfer of sentenced persons (Additional Protocol, Article 2)
Smith v. Germany 27801/05 Judgment 1 April 2010 <a href="#">Link</a>	"The Court is aware of the fact that 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. Accordingly, the Court has previously held that Article 6 § 1 was not applicable to proceedings under the Transfer Convention... However, in those cases the Transfer Convention was not prospectively influencing the course of the trial and the fixing of the sentence, because no assurance was given by the public prosecution before or during the criminal proceedings... It follows that Article 6 § 1 of the Convention under its criminal head is, under the specific circumstances of the present case, applicable	Y: 6§1	fair trial right of access to court transfer of sentenced persons

	<p>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... [I]n the particular circumstances of the present case, it has not been shown that there was a possibility of instituting an effective action for review of the refusal to institute transfer proceedings after a relevant assurance."</p>		
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**E. List of case law relevant for the application of the European Convention on the International Validity of Criminal Judgments (CETS 070)**

<b><i>Case Title, Application No., Type, Date</i></b>	<b><i>Relevance</i></b>	<b><i>Articles (ECHR)</i></b>	<b><i>Keywords</i></b>
Groni v. Albania 25336/04 Judgment 7 July 2009 <a href="#">Link</a>	Albania applied provisions from the European Convention on International Validity and the Convention on Transfer, while they hadn't yet entered into force. This violated in the Court's opinion Article 5 § 1.	Y: 3, 5§1, 34	ill-treatment interim measure international validity of criminal judgments transfer of enforcement of sentence
Garkavyi v. Ukraine	<i>See List D</i>	–	–

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

<b><i>Case Title, Application No., Type, Date</i></b>	<b><i>Relevance</i></b>	<b><i>Articles</i></b>	<b><i>Keywords</i></b>
Garkavyy v. Ukraine	<i>See List D</i>	–	–



### **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