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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)

Update of the index and summaries of relevant case law of the ECtHR

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and the Secretariat

Introduction (by Mr Erik Verbert)

For the time being, a separate document is prepared containing the cases to be added to the 'index and summaries' global document.

As the 'index and summaries' document has grown to a vast documents counting several hundreds of pages, it is more practical to produce a separate 'manageable' documents containing the 'new' summaries, discuss these and insert the cases in the global document after approval.

For this session, several older and I might add almost forgotten alder cases – mainly decisions, most of them dismissing the matter, of the former Commission – have been added. Most if not all of these were found only indirectly, i.e. via other sources such as domestic case law that made references to these cases.

At first case an old(er) decision of the defunct Commission finding the application inadmissible may seem totally uninteresting for our purposes, yet after locating the decisions and reading them carefully – I found them most interesting and worthwhile to include them in the 'index and summaries', at least in this *provisional* way. The reason is that these decisions are probably and most likely certainly the only sources of ECHR case law were certain points of extradition or asylum law have been clearly put forward. For instance the clear notion that there does not exist a right not to be extradited and – as a sort of *complementary thesis* – that there is no right to asylum status either.

X. contre l'AUTRICHE et la YOUGOSLAVIE Comm. Type: Decision Date: 30.06.1964 Articles: N: 3, 5§1, 27§2 Keywords: – Extradition (procedure) – Asylum – Custody (lawfulness) – Torture Links: French Translations: not available	*Circumstances:* The applicant, a Yugoslavian national, indicted for having stolen money from a state-owned company which he had directed, was sentenced to a nine-year imprisonment. He fled from Yugoslavia to Austria, where he filed an asylum claim and never received an answer. The Yugoslavian Government called for the claimant's extradition and he was ultimately detained. *Relevant complaint:* The applicant alleged the violation of the Articles 3 and 5 of the Convention, claiming that he was the victim of cruel and inhuman treatment pending his arrest and that there had been a violation of his right to defence. *Commission's conclusions:* the Commission declared the complaint against Yugoslavia inadmissible, observing that this State had signed and ratified the Convention but had not at that time recognised the competence of the Commission to receive applications lodged by individuals under Article 25. It further concluded that the complaint about the alleged violations was ungrounded. The Commission highlighted in particular the lawfulness of the Austrian pre-extradition detention. It did not find any evidence of the alleged inhuman or degrading treatment, in violation of the Article 3 of the Convention.
K v. Italy and Federal Republic of Germany 5078/71 Comm. Partial Décision 14.12.1972 Type: Decision Date: 15.12.1983 Articles: N: 6§1and §1,8§1, 5§3, Keywords: – Extradition (procedure) – Fair trial Links: English, Translations: not available	*Circumstances:* The applicant, a German national detained in prison in Hamburg was involved in two cases of alleged fraud and usury which occurred in 1963/64 and 1970 respectively. The first case concerns a firm in Hamburg, which undertook to assist debtors in the liquidation of their debts. After four months' detention he was released in 1964. In 1966 he was again arrested and detained for two months. In 1969 he was permitted to leave the country; he moved to Liechtenstein. Following a new warrant of arrest in Liechtenstein he escaped to Panama, fleeing via Italy and the United Kingdom in October 1970. A picture of the applicant was shown and a reward of 2,000 DM was offered for information leading to his arrest. In February 1971 he was arrested at Trieste in Italy. For the first case he was lately extradited by Switzerland to the Federal Republic of Germany in December 1973. With regard to the second case of alleged fraud, the applicant states that, while in Liechtenstein, he was employed by an American corporation. Early in the 1970 this corporation established a new company;

	the German public prosecutor qualified the prospectus issued by the company as fraudulent and opened a new investigation against the applicant. In March 1971 the Federal Republic of Germany requested the applicant's extradition from Italy referring to the other two cases. The request was accepted (the Court of Cassation rejected, in the meantime, the applicant's appeal) and the applicant was extradited to Germany. His pre-trial detention in Germany continued so as to avoid his escape. *Relevant complaint:* The applicant alleged violations of Articles 3, 5, 6, 7, 8, 9, 10 and 14 of the Convention and of Article 1 of Protocol No. 4. In particular, he complained that there had been violation of his right to a fair trial, about the unlawfulness of the extradition by Italy, the unlawful detention in Germany and about having been ill-treated while under escort in Hamburg. *Commissions' conclusions:* With regards to the complaint against Germany, the Commission found that the complaint was inadmissible since the applicant had not exhausted domestic remedies while there were no special circumstances preventing him from doing so. The Commission found that there had not been any violation of the rights and freedoms set out in Article 5 of the Convention, insofar as this part of the application was manifestly ill-founded within the meaning of Article 27, paragraph 2, of the Convention. On the grounds of Article 5 of the Convention, the Commission, taking into account both the applicant's own statements and the court decisions submitted by him, was satisfied that these conditions were fulfilled as regards his detention pending trial. It considered in particular that the reasoning of the domestic court in the judgment regarding the continuation of the pre-trial detention (danger of absconding, seriousness of the offences) were relevant and sufficient with regard to the case-law of Article 5 of the Convention. Concerning the complaint against Italy, the Commission declared it inadmissible observing that this State has signed and ratified the Convention but has not yet recognised the competence of the Commission to receive applications lodged by individuals under Article 25.
H. v. Spain Comm.	*Circumstances:* The applicant, an American citizen, was arrested in Spain and sought by the United

No.: 10227/82 Type: Decision Date: 15.12.1983 Articles: N: 6§1 Keywords: – Extradition (procedure) – Fair trial Links: English, French Translations: not available	States. The extradition was authorised by the Audiencia Nacional. *Relevant complaint:* The applicant complained of having had inadequate legal representation and interpretation before the Audiencia Nacional, contrary to art. 6§1. *Commission's conclusions:* In the Commission's view, the word 'determination' involves the full process of the examination of an individual's guilt or innocence of an offence, and not the mere process of determining whether a person can be extradited to another country. The complaint was *ratione materiae* incompatible with art. 6§1.
Stocké . v. Germany Court (Chamber) No.: 28/1989/188/248 Type: Judgment Date: 19 March 1991 Articles: N: 5-1; N: 6 Keywords: – Extradition – Fair trial Links: English, French Translations:	*Circumstance*s: During the summer of 1975, subsequent to the bankruptcy of his construction firm, criminal investigations were instituted against the applicant, a German national, on suspicion of fraud, fraudulent conversion and tax offences. From 26 March until 9 July 1976 he was in detention on remand. The execution of the arrest warrant was then suspended. In 1977 an international search warrant was issued against the applicant, who had absconded to France to avoid his arrest. Thanks to the help of a police informer, the applicant was arrested at an airport in Luxembourg by members of the Special Task Force. He was indicted in April 1979. *Relevant complaint:* The applicant claimed under 5 § 1 and 6 § 1 to have been victim of collusion between German authorities and a German police informer for the purpose of bringing him back to the Federal Republic of Germany against his will. *Court's conclusions:* The Court found that there had been no violation of Article 5 or Article 6 of the Convention. After having questioned nine witnesses, three under the domestic legal system,, and also having heard evidence on 4 July 1988 from two prosecutors and a policeman concerning the nature and extent of the contacts between the prosecuting authorities and the police informer, the Court took into account that everyone questioned denied that any kind of plan was in place to bring the applicant back to the Federal Republic of Germany against his will or that any such plan had been agreed upon. Therefore, like the Commission, the Court considered that it had not been established that the co-operation between the German authorities and the police informer extended to unlawful activities abroad. Accordingly, it did not seem necessary to examine, as the Commission did, whether the

	applicant's arrest in the Federal Republic of Germany would have violated the Convention.
E.G.M. v. Luxembourg, (dec.) n° 24015/94, 20 May 1994 D.R. 77-A, p. 144 Articles: N 3-5-6-Keywords: – extradition – fair trial – right to defence – inhuman treatment – non *bis in idem* Links: English, French Translations: not available	*Circumstances:* A Colombian national was convicted by the Luxembourg District Court on the charge of offences related to money-laundering. He was consequently sentenced to a five-year imprisonment and a penalty of 10 million €. He was subject to an extradition order requested by the United States Authorities for cocaine trafficking and money laundering-related offences. In 1994 the applicant was extradited to the USA *sub conditionis* of not being tried or prosecuted for the same offences for which he had just been prosecuted and tried in Luxembourg. *Relevant complaint:* The applicant complained that he did not receive a fair trial. His claim was based on the fact the court was neither independent nor impartial court and that there had been a violation of his right to defence. He relied also on the unlawful retroactive application of money laundering legislation, which was applied to offences committed before its coming into force. Finally, the applicant evoked Article 3 of the Convention, alleging that extradition to the USA could allow him to be subjected to torture or to inhuman or degrading treatment or punishment. *Court's conclusions:* The Commission rejected the application due to the fact that he had not exhausted the remedies available to him under Luxembourg law, taking into account that the case did not reveal any particular circumstance which could have exempted the applicant from the generally recognised rules of international law. The Commission declared that the extradition proceedings had been fully respected, as it was the Luxembourg authorities' duty only to ascertain whether the formal conditions for extradition were satisfied. It did not consider that there had been a violation of *ne bis in idem*, principle not guaranteed by the Convention in the context of criminal proceedings in different States. On the grounds of the Article 3 of the Convention, the Commission observed that the alleged danger of being subjected to inhuman or degrading treatment was not supported by *prima facie* evidence. For this reason the Commission declared the application manifestly ill-founded.
Maaouia v. France	*Circumstances:* A Tunisian national entered France

No.: 36952/98 (GC) Type: Judgment Date: 5 October 2000 Articles: N: 6 Keywords: – asylum – expulsion – Links: English, French Translations: : Azerbaijani, Spanish	in 1980 and married a French national in 1992 with a disability. In 1988 he was sentenced to a 6-year prison sentence for armed robbery and armed offences, committed in 1985. He was released in 1990. On 8 August, the Minister of Interior issued a deportation order against him. He was unaware of the order of which he was notified on 6 October 1992 when he attended the Nice Centre for Administrative formalities in order to regularise his status. When he refused to return to Tunisia, he was sentenced to a 1-year prison sentence for failing to comply with the deportation order as well has an order excluding him from the French territory for 10 years. Ultimately after having appealed against the latter decision, at the Court of Cassation also, and after having fought the deportation order, seeking rescission of the exclusion order and after having obtained regularisation, he obtained a temporary residence permit valid for 1 year in 1998. Later on he obtained a ten-year residence permit. *Relevant complaint:* The applicant complained that the length of the proceedings started in 1994 for rescission of the exclusion order was unreasonable in view of Art. 6§1. *Court's conclusions:* Decisions regarding the entry, stay and deportation 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. Art. 6§1 taken together with Art. 1 of Protocol n° 7 and its explanatory report, make it clear that the States (parties) are aware that Art. 6§1 does not apply to procedures for the expulsion of aliens (§§ 35-39). There are two dissenting opinions stating that, based upon the legal history of the drafting of Art. 6 and an extensive and dynamic interpretation of the Convention, Art. 6§1 is applicable to the case.
Raf v. Spain Type: Judgment. N° 53652/00, Date: 17 June 2003 Articles:N : 5§1,a,c,f Keywords: – Extradition – Custody (lawfulness) (reasonable time) – expulsion Links: French	*Circumstances:* The applicant is a Yugoslav national, arrested in Spain and charged with being a member of a gang specialised in the forgery of identity papers and safe-breaking. On the same day the order was made for his detention pending trial, coupled with his re-arrest under an international arrest warrant and detention pending extradition. The applicant was also subject to a French extradition request on the charge of aggravated rape, torture and kidnapping. After further convictions for theft, forgery and possession of weapons, for which

Translations: not available	he was sentenced to eight years imprisonment, the Spanish cabinet made a decision to grant extradition to France. *Relevant complaint:* The applicant filed a complaint alleging certain violations of the Article 5, deducing that he had been unlawfully deprived of his freedom pending the extradition proceeding. *Court's conclusions:* The Court held that there had been no violation of Article 5 of the Convention. It stated that the applicant had been detained not only for extradition purposes but also on suspicion of various offences for which he was awaiting trial in the Spanish courts, in accordance with Article 5 § 1 (c) of the Convention. Following his conviction, he was held in accordance with the provisions of Article 5 § 1 (a) of the Convention. Lastly, from the date on which the Audiencia Nacional ruled that he should be handed over to the French authorities, the applicant's detention had been continued with a view to extradition until the date he was handed over to the French authorities. The Court pointed out that here also he had been in detention for a reasonable time and that the authorities had shown the necessary diligence in the conduct of the case taken as a whole.
Peñafiel Salgado v. Spain *(dec.),* *n° 65964/01* *16 April 2002* *Articles N: 2*§1,3,8§1 Keywords: – Asylum – Extradition – Torture – Right to life – Right to respect for private and family life Links: French Translations: not available	*Circumstances:* The applicant, an Ecuadorian citizen, fled to Spain in order to avoid a detention order against him on the charge of bankruptcy. Here he created a new firm with his companion. In 2000, pending an extradition request by the Ecuadorian Government with relation to other people who were in the same position as the applicant (bankers who had left the country during the economic crisis of 1995,) he filed an asylum claim in Spain. In the meantime he was arrested in Lebanon during a business trip. Lebanon accepted the extradition request from Ecuador but the person had escaped to Spain. The applicant once again submitted his asylum request to Spain, which was refused. Then the Ecuadorian authorities asked Spain to continue the extradition proceedings which had been interrupted by the asylum file. The Audiencia Nacional proceeded with the extradition as a passive extradition, as it had been adopted by Lebanon. The applicant appealed asking for the suspension of the extradition proceedings, which was accorded until 14 March 2001. *Relevant complaint:* The applicant filed a complaint on the unlawfulness of his detention, which was

	based on offences (a bank fund appropriation) which are not sanctioned by law with the jail detention. He alleged that his prosecution was for political reasons. The Government claimed that it had examined the conditions for extradition and had received adequate guarantees that the applicant would not be subjected to any inhuman or degrading treatment if deported to his country. Relying on Article 6 of the Convention, the applicant complained that the Spanish courts had not considered the merits of the extradition procedure or the circumstances in which Ecuador had demanded the extradition from Lebanon through a document which had been badly translated into Arabic. He also complained about the examination of his asylum request by the Spanish authorities and irregularities in the proceedings brought against him in Ecuador, believing that the Spanish state was co-responsible for these facts *Court's conclusions:* The Court stated that the extradition proceedings had been fully respected, as it was the Lebanese authorities' duty only to ascertain whether the formal conditions for extradition were satisfied. It added that neither the form nor the motives could be examined by the Spanish courts, which could only ensure that the applicant's rights guaranteed by Articles 2 and 3 of the Convention would be respected in Ecuador. On the grounds of the request of asylum rejected by the Spanish authorities, the Court pointed out that neither the Convention nor the Protocols provide for the right to asylum. The Court highlighted that the Convention does not in itself guarantee the right to enter and reside in a Contracting State to individuals who are not nationals of that State. Accordingly it rejected its competence *ratione loci* underlining that the equality of proceedings, events or procedures that may take place in Ecuador as a result of the applicant's extradition is not likely to engage the responsibility of Spain. On the grounds of Article 3 the Court declared the claim manifestly unfounded due to the assurances obtained by the Government of Ecuador that there was no threat to the applicant's right to life, given the provisions of the political Constitution of Ecuador.
Sardinas Albo v. Italy *Type:*Judgment *n° 56271/00,* *Date :*17 February 2005 *Articles:* 5§3 ; N : 3	*Circumstances:* The applicant, in detention in Italy pending the proceeding, claimed to be a Cuban national. He was arrested in Milan on suspicion of international drug trafficking. On 7 October 1999 Como District Court sentenced him to fifteen years

Keywords: – Custody (length) (lawfulness) (reasonable time) – Extradition – Right to liberty and security Links: English, Translations: not available	imprisonment, which was subsequently reduced to eleven years on appeal. Meanwhile, on 14 May 1998 the Ministry of Justice had requested that the applicant be placed in detention with a view to his extradition. In the meantime the United States authorities had once again requested the applicant's extradition on the charge of making false statements. On 9 March 2000 Brescia Court of Appeal (whose decision was upheld by the Court of Cassation) ruled in favor of extradition. Its judgment indicated that the applicant was a Cuban national with a permanent residence permit in the United States. The applicant alleged, however, that his status in the United States was that of a deportable alien. *Relevant complaint:* The applicant relied on Article 3 (prohibition of inhuman or degrading treatment or punishment), Article 5 (right to liberty and security) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. He in particular alleged that his extradition to the USA would have exposed him to an indefinite time of imprisonment, taken into account the lack of diplomatic ties between Cuba and the United States. *Court's conclusions:* The Court highlighted that the seriousness of the offences on charge and the complexity of the case could justify the length of the preliminary investigation. However the Court stated that in this case there had been a violation of Article 5 § 3 based on the excessive length of proceedings. It noted that the proceedings had either been stayed or that the examination of the merits of the case had been adjourned pending a ruling on a matter of jurisdiction. Under these circumstances, the Court considered that the Italian authorities had not displayed "special diligence" in the conduct of the proceedings.
Cipriani v. Italy *Type:* Decision, *n°* *22142/07*, *Date:* 30 March 2010 Articles N:3,5,6,13 Art 2 of Protocol 4 Keywords: – Right to liberty and security – Torture – Death-penalty Links: French Translations: available in Italian	*Circumstances:* The applicant, an Italian citizen, who acquired the American citizenship in 1988, was subject to an arrest warrant by the USA on the charge of murder and of being part of an unlawful organisation. In April 2005 the Court of Appeal of Rome accepted the request for extradition, having received assurances by the American Government that he would not risk the death penalty. The Administrative Tribunal, in the first instance, suspended the effect of the Ministerial Decree for extradition (see note below). He had also submitted several requests to be released, all of them rejected in first and second instance. In March 2007 he was

	released because he had spent the maximum terms of the applicant's detention. At the end of March 2007 some conditions on his freedom of movement were imposed upon him in order to prevent him from escaping. In the meantime, the applicant submitted his complaint to the ECHR. In July 2007 he was extradited to the United States. *Relevant complaint:* The applicant alleged that his extradition to the United States of America would amount to a breach of his rights under Art. 3 and 13, 5 and Art. 6 of the Convention. He alleged in particular that his extradition to the USA would expose him to the death penalty and this would amount to a breach of his rights under Art. 3 of the Convention and under Article 1 of the Protocol 6 to the Convention. He further alleged that the imposition of personal restrictive measures after having spent the maximum time of the detention would be in contrast with the Article 5 of the Convention. *Court's conclusions:* The Court stated that the applicant's extradition would not constitute a violation of the articles invoked. Concerning the risk of the death penalty, the Court recalled the conclusions of the domestic courts, which had been rightly founded on the assurances given by the American authorities referring to the internal law which does not provide for the death penalty for the related offences. Accordingly, the Court stated that there had been no violation of Article 1 of Protocol no. 6. With regard to the danger of being subjected to treatment contrary to Article 3 of the Convention, the applicant had not supported his allegations with any objective element. With regard to the Article 6 of the Convention, the Court recalled its case-law (Raf c. Spagna (dec.), no 53652/00 and Sardinas Albo c. Italia (dec.), no 56271/00) about the lawfulness of the extradition proceeding. Lastly the Court did not find any excessive length of the proceedings, taken into account the complexity and seriousness of the offences involved in them. The Court concluded that there had not been any violation of Article 5 §1 of the Convention, because the applicant had not been deprived of his freedom but he had been subject to some necessary restrictions taking into account the complexity and the seriousness of the related offences, in compliance with Article 2 of Protocol 4 (see Baumann c. Francia, CEDH 2001-V, Riener v Bulgaria n 46343).

	NOTE: The Ministerial extradition decree was appealed against by Mr Cipriani with the Administrative Judge (TAR, first instance). The TAR suspended the ministerial decree as an urgent measure, declaring it ineffective in merit, for the main reason that the assurances given by the American authorities were not absolute in the manner intended by the domestic Constitutional Court. The Ministry appealed to the second instance administrative tribunal (named Consiglio di Stato) who modified the first instance administrative judgment, stating that the decision on the merit of the extradition was not within the competence of the administrative judge. The Consiglio di Stato declared that the ordinary domestic judge had the competence to check the lawfulness of extradition and that the administrative judge had the duty to verify whether the ministerial decree of extradition was manifestly illogical or arbitrary. This did not happen in the present case. *Concerning the execution of the extradition, the applicant claimed, in a special proceeding in the Consiglio di Stato, that the American Authorities had not respected certain conditions attached to the extradition decree (such as the fact that he had to serve his sentence, or part of his sentence, in Italian prisons). The Consiglio di Stato took into account that the applicant was not an Italian citizen anymore and that the bilateral treaty with the USA excluded the possibility of imposing unilateral and binding conditions to extradition procedures. It added that the USA Attorney General had refused the condition proposed but that the surrender of Cipriani had nevertheless to be understood as an unconditional extradition.*
Ibragimov v. Slovakia No.: 65916/10 Type: Decision Date: 30 June 2015 Articles: N: 3, N:13, N : 6 Keywords: – Extradition (grounds for refusal) – Death penalty – Ill-treatment Links: English Translations: not available	*Circumstances:* Extradition of one 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 complaint:* The applicant filed a second complaint alleging that his extradition to the Russian Federation would amount to a breach of his rights under Art. 3 and 13 and Art. 6. The applicant filed a new asylum claim in Slovakia on 6 December 2010 (§§23 -32). The applicant further invoked medical and psychological issues, and other problems (§33), including injuries sustained during his detention (§34) and he referred

	to earlier similar cases (§§36-37). *Court's conclusions:* Neither the Convention nor its Protocols contain the right to political asylum. Also the right not to be extradited is not one of the rights and freedoms recognised by the Convention and its Protocols (§51). In re-assessing the situation of the applicant in view of the alleged relevant new information (since the initial application n° 51946/08), the Court questioned whether such elements could already have been submitted in the context of the first application (§57). The Court found that the new elements like the detention situation in Russia was not subject of domestic remedies and that the remainder of the complaints were dealt with by the Slovak courts. The guarantees provided by Russia were deemed sufficient. Moreover, the Russian Federation confirmed the validity of all such guarantees. In the case of Chentiev, the respective authorities of the respondent government acted upon the guarantees by visiting Chentiev and established that these guarantees were in fact being respected. The validity of the guarantees was not undermined by other (similar) individual cases and additional material from various sources relied upon by the applicant: a mere possibility of ill-treatment in circumstances similar to those of the present case is not in itself sufficient to give rise to a breach of Art. 3. As to the other material, the Court is of the opinion that its relevance is diminished by the fact that it all dates from and refers to events having taken place in 2011 and earlier, while the risk of ill-treatment is to be assessed with reference to the circumstances obtaining at the present time. (§§69-76). As to the complaint regarding Art. 6, invoking the 'invented nature' of the charges against him and the reliance on evidence allegedly obtained under torture (of others): the Court reiterates that an issue might exceptionally be raised under Art. 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 (§82). On the basis of all the available material, including the specific and renewed assurances, there are no reasons for reaching a different conclusion from that reached in the decision of 14 September 2010. *Note:* This decision was taken following the decision dated 21 February 2010 declaring the second application partially admissible. This decision essentially confirms the decision re.

	Chentiev and Ibragimov v. Slovakia (nos.: 21022/08 & 51946/08) taking into account some new / recent developments re. Ibragimov, as well as the final decision dated 15 April 2014 declaring the remainder of the second application re. Chentiev (n° 27145/14) inadmissible.
K. and Others v. Sweden N: 59166/12 Type: Judgment GC Date: 23 August 2016 Articles: 3 Keywords: – Torture – Asylum – Deportation **Links: English, French** **Translations: not available**	*Circumstances:* The applicants, three Iraqi nationals, applied for asylum in Sweden, alleging that they risked persecution in Iraq by Al-Quaeda having had work links with the United States of America and having already been subject to persecution previously. Their request was rejected; the Migration Court upheld the decision not to grant asylum. A Chamber of the European Court upheld the decision. The case was finally referred to the Grand Chamber. On 22 November 2011 the Migration Agency rejected the applicants' asylum application. In respect of the Iraqi authorities' ability to provide protection against persecution by non-State actors, the Agency stated that the Iraqi security forces had been reinforced significantly and that the current country information also showed that it had become more difficult for Al-Qaeda to operate freely in Iraq and that there had been a significant decline in sectarian violence. The Migration Court upheld the Migration Agency's decision. The applicants appealed to the Migration Court of Appeal (Migrationsöverdomstolen). Their request in appeal was refused. *Relevant complaint:* the applicants claimed their rights as aliens to enter and to remain in Sweden and to be considered a refugees or otherwise in need of protection. They contended that if the first applicant were to be deported to his home country, he would necessarily have to be in contact with government agencies. If a threat from government agencies had existed before he had fled to Sweden, the threat would continue to exist upon his return. They accordingly relied on the violation of Article 3 of the Convention. *Court's conclusions:* The Court stated that the applicant's deportation would constitute a violation of Article 3 of the Convention. It noted, as a general principle, that as asylum-seekers were normally the only parties able to provide information about their own personal circumstances, the burden of proof should in principle lie with them to submit all evidence relating to their individual circumstances. It furthermore observed that it was also important to

	take into account all the difficulties which asylum seekers could encounter abroad when collecting evidence. In this case the Court actually recalled that various reports (the Office of UN High Commissioner for Refugees 2014 report and the Human Rights Watch's World Report 2015 on Iraq) and other reliable sources showed that persons who collaborated in different ways with the authorities of the occupying powers in Iraq after the war had been and continued to be targeted by Al-Qaeda. It concluded that the applicants, if deported to Iraq, would have faced a serious risk of continued persecution by non-State actors. It added that in fact the Iraqi authorities' capacity to protect their people should be considered considerably diminished with regard to individuals, such as the applicant, who are members of a targeted group.
Nasr and Ghali v. Italy (Abu Omar) no. 44883/09 Type: Judgment Date 23 February 2016 Articles: Y: 3,5,8,13 Keywords : -Extradition -Extraordinary rendition -Lack of effective remedies because of secrecy posed by Government -Impunity granted because of omitting to seek extradition and because of granting mercy **Links: French** **Translation: Italian**	*Circumstances:* The case concerned an extrajudicial transfer (or "extraordinary rendition"), namely the abduction by CIA agents, with the co-operation of Italian secret service officials, of the Egyptian imam Osama Mustafa Hassan Nasr, also known as Abu Omar, who had been granted political asylum in Italy, and his subsequent transfer to Egypt, where he was held in secret for several months. It is to be noted that criminal proceedings were pending against the applicant. Mr Nasr was suspected, among other offences, of conspiracy to commit international terrorist acts, and his links to fundamentalist networks were investigated by the Milan public prosecutor's office (later on, on 6 December 2013, the Milan District Court convicted Mr Nasr of membership of a terrorist organisation). Mr Nasr was abducted and taken to the Aviano NATO air base operated by USAFE (United States Air Forces in Europe), where he was put on a plane bound for the Ramstein US air base in Germany and finally brought to Egypt where he was ill-treated and tortured. Ms Ghali had reported her husband's disappearance to the police. The public prosecutor's office in Milan immediately started an investigation into abduction by an unknown person or persons. Following the investigation, a number of Italian secret services officials and American CIA agents were prosecuted and tried. No extradition for prosecution was ever sought in regard to the 22 American citizens sought by Italian justice. The Italian Prime Minister stated that the information and documents requested by the public prosecutor's

	office were covered by State secrecy and that the conditions for lifting that secrecy were not met. In a judgment of 18 March 2009 the Constitutional Court held that the interests protected by State secrecy took precedence. The case against the Italian officials had to be discontinued because of the secrecy imposed. 22 CIA operatives and high-ranking officials, and one US army officer, were convicted *in absentia* of Mr Nasr's abduction and were given prison sentences of between six and nine years. *Relevant complaint:* Mr Nasr's complaint concerned his abduction, in which the Italian authorities had been involved, the ill-treatment to which he had been subjected during his transfer and detention, the fact that those responsible had been granted impunity owing to the application of State secrecy, and the fact that the sentences imposed on the convicted US nationals had not been enforced because of the refusal of the Italian authorities to request their extradition. Both applicants alleged, among other violations, a breach of Article 8 (right to respect for private and family life) in that Mr Nasr's abduction and detention had resulted in their forced separation for over five years. *Court's conclusions:* Relying on previous decisions, the Court also mentioned Marty's Report of the Council of Europe on extraordinary rendition and found that there was a violation of Article 3 to that regard, and also in relation to Articles 8 and 13 of the Convention. As to the last issue, the Court mentioned that Italy did not ensure the respect of the right of the applicants to have an effective inquiry conducted on the abduction due to the position of the Italian defendants because of the imposition of secrecy and due to the position of the American CIA and diplomatic officials because of the refusal to ask for extradition in view of prosecution to the USA. The refusal to seek the surrender of the American citizens after the sentence became final was also deemed to be contrary to Article 13 and resumed as ensuring the impunity of people involved. *NOTE: The Court's decision is to be considered relevant as case-law for the following reasons: 1. Italy was considered responsible for not having sought extradition from the USA; 2. Italy was considered responsible for not having asked for extradition to the USA; 3. Italy was considered responsible because the Italian constitutional court upheld the imposition of the secrecy enforced by the Government; 4. Italy was considered responsible*

	because the President of Republic granted mercy to some of the sentenced American persons. The interest of the decision lies in particular in the fact that the granting of mercy is traditionally considered to be a sovereign power; according to the Court's decision such a decision can be scrutinized by the Court. Likewise, any political decision on granting extradition or not may be under scrutiny as well.