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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)

Proposal for an update of the document on 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 (Doc PC-OC (2011) 21 rev 10)

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

Törköly v. Hungary No.: 4413/06 Type: Decision Date: 5 April 2011 Articles: N: 3, 6§1 Keywords: – ill-treatment – life sentence Links: English only Translations: not available	*Circumstances:* Life sentence served in Hungary with eligibility for release on parole after 40 years. *Relevant complaint:* The life sentence without any eligibility for release on parole before the applicant was 75 years of age amounted to inhuman punishment. *Court's conclusions:* Notwithstanding the applicant's representations to the effect that his life expectancy in statistical terms may be shorter than 75 years of age, the Court is satisfied that the judgment imposed on the applicant thus guarantees a distant but real possibility for his release. The applicant may be granted presidential clemency even earlier. The authorities are under the obligation to collect such particulars of the defendant as necessary for the decision on pardon, that the minister decides on the endorsement of the request in the possession of those particulars, and that the request must be submitted to the President of the Republic even if the minister decides not to endorse it. In sum, nothing indicates that requests for pardon are not duly or individually considered. Therefore, the possibility of the applicant's eventual release *de jure* exists in the domestic law and the penalty concerned is also reducible *de facto*. *[page 5]*
Makhmudzhan	*Circumstances:* Extradition of an unsuccessful asylum seeker of ethnic Uzbek origin from Russia to the

Ergashev v. Russia No.: 49747/11 Type: Judgment Date: 16 October 2012 Articles: Y: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	Kyrgyz Republic for the purposes of prosecution on charges of embezzlement. Interim measure complied with. *Relevant complaints:* If extradited to Kyrgyzstan, the applicant would be subjected to torture or inhuman or degrading treatment or punishment because he belonged to the Uzbek ethnic minority. The assurances of the Kyrgyz Republic Prosecutor General did not offer a reliable guarantee against ill-treatment. The requests for assistance from the Special Representative of the President of the Russian Federation on international cooperation in the fight against terrorism and transnational organised crime and the Ministry of Foreign Affairs, that the protection of his rights would be monitored after his extradition, in particular by way of visits to him by diplomatic staff of the Russian Ministry of Foreign Affairs in Kyrgyzstan, had not been followed up, as the applicant was not aware of any written consent on the part of those bodies to such monitoring. Nor had any such documents been submitted by the Government to the Court. *Court's conclusions:* It follows from the evidence before the Court that the situation in the south of the country is characterised by torture and other ill treatment of ethnic Uzbeks by law-enforcement officers, which increased in the aftermath of the June 2010 events and has remained widespread and rampant, being aggravated by the impunity of law-enforcement officers. Despite the acknowledgment of the problem and measures taken by the country central authority, in particular the Prosecutor General, their efforts have so far been insufficient to change the situation. The Court does not overlook the fact that the criminal proceedings against the applicant concern an offence of an economic nature allegedly committed in 2007 and thus unrelated to the June 2010 violence. However, it appears from the sources before the Court that, while the said practice of torture and other ill-treatment of ethnic Uzbeks is particularly evident in the context of prosecution of the June 2010 related offences, given their nature and mass character, it is not limited to those offences, being described by Human Rights Watch as "routine in cases involving ethnic Uzbek suspects detained on charges unrelated to the June 2010 violence". The assurances of the Kyrgyz Republic in the present case are rather specific. They are given by the Prosecutor General of the Kyrgyz Republic and concern treatment which is illegal in that State. While they appear to be formally binding on the local authorities, the Court has serious doubts, in view of the poor human rights record of the south of the country, whether the local authorities there can be expected to abide by them in practice. Furthermore, the Court notes that the Government's reference to the possibility of monitoring the observance of the assurances through the Special Representative of the President of the Russian Federation on international cooperation in the fight against terrorism and transnational organised crime and the Foreign Affairs Ministry of the Russian Federation is not supported by any evidence except for the general request for assistance by the deputy Prosecutor General with no information about any follow-up. Although the Court does not doubt the good faith of the Kyrgyz

	authorities in providing the assurances mentioned above, it is not, in these circumstances, persuaded that they would provide the applicant with an adequate guarantee of safety. *[paras. 72, 73 and 75]*
Ketchum v. Romania No.: 15594/11 Type: Decision Date: 11 June 2013 Articles: N: 5§1, 5§4, 6§1, 8 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – family life (separation of family) Links: French only Translations: not available	*Circumstances:* Extradition of an American citizen, who had been granted a residence permit in Romania valid for five years and married a Romanian citizen and started a business in Romania, from Romania to the United States of America. *Relevant complaints:* 1. The applicant's provisional detention from 25 February through 25 March 2011 lacked legal basis and was not subject to judicial review. 2. The extradition proceedings were unfair by reason of several irregularities, including lack of communication of the extradition request, deficiencies in English translation during hearings and hostile attitude of the judges. 3. The applicant's extradition to the United States of America would amount to disproportionate interference with his private and family life. *Court's conclusions:* 1. The Romanian courts have held that the applicant was lawfully detained. They have indicated as the legal basis for his detention the provisions of Act No. 302/2004. The Court sees no reason to challenge that interpretation of Romanian law. The Court notes that the first instance decision to remand the applicant to provisional detention has been reviewed by the High Court, which ruled on the applicant's appeal. It finds, therefore, that there has been in this case a review by two degrees of jurisdiction of the applicant's deprivation of liberty in accordance with the requirements of Article 5§4 of the Convention. *[paras. 24, 25 and 27]* 2. The Court reiterates that an extradition procedure does not involve a challenge to an applicant's civil rights and obligations nor does it relate to the merits of a criminal charge against him. Moreover, the applicant has not alleged that he is likely to face a flagrant denial of justice in the United States of America. Accordingly, Article 6§1 of the Convention does not apply to the extradition proceedings. *[para. 30]* 3. Without contesting the consequences of the applicant's removal from the Romanian territory where he had established a private and family life for a number of years, the Court is of the opinion that the Romanian authorities did not exceed the margin of appreciation provided by Article 8 of the Convention and the Court's own case law. Moreover, the Court does not find in the present case any exceptional circumstances which would require the applicant's right to respect for his private and family life to prevail

	over the legitimate aim pursued by his extradition. *[para. 34]*
Nizomkhon Dzhurayev v. Russia No.: 31890/11 Type: Judgment Date: 3 October 2013 Articles: Y: 3, 5§4, 34, 38 Keywords: – assurances – custody (judicial review) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: Georgian, Turkish	*Circumstances:* Extradition of an unsuccessful asylum seeker from Russia to Tajikistan for the purposes of prosecution for large-scale economic crimes and organising criminal group activity. Extradition granted but postponed for the purposes of the person's prosecution in Russia for other offences. Interim measure not complied as following his release from custody after application of the interim measure, the applicant disappeared and there were reasons to believe that he was abducted to Tajikistan. *Relevant complaints:* 1. The authorities' conclusions concerning the risk of ill-treatment had been based on the scant information obtained from a handful of official sources; both the Russian Prosecutor General's Office and the Moscow City Court had adopted an excessively formalistic approach towards the assessment of the evidence in the applicant's case. The applicant also questioned the value and credibility of the assurances put forward by the Tajik authorities. In particular, he drew attention to the fact that they had only provided for the possibility of the Russian Ministry of Foreign Affairs examining the conditions of his detention but had not pointed to any specific mechanism that would allow monitoring of the treatment received by the applicant, nor had they established any form of responsibility on the part of the authorities of the requesting country for a potential breach of their obligations. 2. The appeal court, which had reviewed the first three decisions of the Khamovnicheskiy District Court to detain the applicant and to extend the term of his detention, had not been sufficiently prompt in examining his complaints. *Court's conclusions:* 1. The fact that the Prosecutor General's Office sent the witness statements to its Tajik counterpart for investigation and requested additional diplomatic assurances demonstrates that the Prosecutor General's Office took heed of that material. Against that background, it is difficult for the Court to understand that the extradition order signed by the Deputy Prosecutor General neither made an assessment of the risk of ill-treatment faced by the applicant, nor mentioned the existing allegations of such a risk. Given that no such assessment was made in line with the requirements of the Convention, the Deputy Prosecutor General's conclusion that the international treaties to which the Russian Federation was a party did not prevent the applicant's extradition appears to be unsubstantiated. The City Court deciding on the applicant's challenge against the extradition order mainly based its assessment of the general situation in Tajikistan on the latter's Constitution, certain domestic laws, and the fact that it was a member of the United Nations and party to certain UN treaties, including the Convention against Torture and the

	International Covenant on Civil and Political Rights and the Optional Protocol thereto. The City Court thereby reached the conclusion that Tajikistan was a democracy abiding by the rule of law and respectful of human rights. While the importance of the aforementioned national texts and international instruments should not be understated, scarce attention was paid to the question of their effectiveness and practical implementation in Tajikistan. Indeed, the City Court's conclusion that Tajikistan "had taken measures to create mechanisms for the implementation [of the human rights instruments]" appears to be rather vague and supported only by summary references to the existence of the national ombudsman, a human rights commission headed by the Prime Minister and the supervisory functions exercised by the Office of the Prosecutor General. The Court further notes the City Court's failure to take account of any information coming from independent sources, including the reports by reputable international institutions. By contrast, the City Court readily accepted the assurances provided by the Tajik authorities as a firm guarantee against any risk of the applicant being subjected to ill-treatment after his extradition. The Court reiterates that it is incumbent on the domestic courts to examine whether such assurances provide, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention. Yet the City Court did not assess the assurances from that perspective. The City Court did not consider the nature and scale of the charges brought against the applicant, which could put him in the same category as those in political opposition to the Tajik authorities and, therefore, expose him to similar risks. The City Court also limited its assessment of the witness statements to finding that "none of them had indicated that the applicant would personally be subjected to torture". In so doing, the City Court confined itself to a formal examination of the witness statements, failing to elaborate on one of the most critical aspects of the case. As demonstrated before the Court, the Tajik authorities are reluctant to investigate allegations of torture and to punish those responsible. The Court's concerns about the Tajik authorities' willingness to abide by domestic and international law are further aggravated by the recurrent incidents of disappearance of Tajik nationals in Russia and their subsequent secret repatriation to Tajikistan by circumvention of the existing extradition procedure in both those countries. The applicant's forcible repatriation in the present case confirms the persistence of this manifestly unlawful pattern. In these circumstances the Tajik authorities' assurances that the applicant would be treated in accordance with the Convention cannot be given any significant weight. It has not been demonstrated before the Court that Tajikistan's commitment to guaranteeing access to the applicant by Russian diplomatic staff and the staff of the Russian Prosecutor General's Office would lead to effective protection against torture and ill-treatment in practical terms. Indeed, no argument was presented that the aforementioned staff enjoyed the necessary independence and were in possession of the expertise

	required for effective follow-up of the Tajik authorities' compliance with their undertakings. Nor was there any guarantee that they would be able to speak to the applicant without witnesses. In addition, their potential involvement was not supported by any practical mechanism setting out, for instance, the procedure for lodging complaints by the applicant or for their unfettered access to detention facilities. *[paras. 115, 117 through 119, 132 and 133]* 2. It does not appear that any complex issues were involved in the determination of the lawfulness of the applicant's detention by the appeal court. Nor was it argued that proper review of the applicant's detention had required, for instance, the collection of additional observations and documents. In these circumstances, the delay of twenty-three days in examining the applicant's appeal against the detention order was incompatible with the "speediness" requirement of Article 5§4. *[paras. 176 and 177]*
Ermakov v. Russia No.: 43165/10 Type: Judgment Date: 7 November 2013 Articles: Y: 3, 5§4, 34; N: 5§1(f), 5§4 Keywords: – assurances – asylum – custody (judicial review) – custody (length) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Extradition of a failed asylum seeker from Russia to Uzbekistan for the purposes of prosecution for a number of offences. Extradition granted for some of the offences and refused for the rest of the offences. In the course of the extradition proceedings, the person's custody for the purposes of extradition was replaced with house arrest for the same purposes. Subsequently, the person sought was rearrested for the purposes of criminal proceedings against him in Russia. Extradition postponed while the person sought served a sentence of imprisonment in Russia. Following his release from prison, the applicant disappeared and there were reasons to believe that he was abducted to Uzbekistan. Interim measure not complied with. *Relevant complaints:* 1. If returned to Uzbekistan the applicant would run a real risk of being subjected to ill-treatment in breach of Article 3 of the Convention. The authorities had relied only on the material obtained from Russian governmental agencies; the Uzbek assurances should be disregarded, in view of the overall climate of impunity for human rights abuses in Uzbekistan and the absence of a control mechanism in respect of the assurances. His representatives further supplemented his complaint, submitting that there had been a violation of Article 3 of the Convention, as his illegal transfer to Uzbekistan could only have been achieved with the active or passive involvement of the Russian authorities, and that the authorities had failed to conduct an effective investigation. 2. The initial period of the applicant's detention had been ordered by a prosecutor, his detention pending extradition had been excessively long, and that on 8 July 2010 his detention had been extended by two different courts for different periods of time, in breach of the legal certainty principle. He further complained that his house arrest constituted a deprivation of liberty within the meaning of Article 5 of the Convention and was unlawful, since the aggregate time he had spent in custody and under house arrest

	manifestly exceeded the maximum of eighteen months established in the domestic law, and that the domestic law governing house arrest fell short of the "quality of law" requirements. 3. The proceedings of 2 November 2010 concerning extension of the applicant's detention and the ensuing appeal proceedings the domestic courts had failed to examine his main argument that he should have been released since the extradition proceedings had no longer been in progress. The domestic law did not provide for a review procedure in respect of house arrest. *Court's conclusions:* 1. As regards the applicant's failure to apply for refugee status in due time, it is not in dispute between the parties that the applicant had arrived in Russia, when no charges had been pending against him, and applied for refugee status seven months later, after his arrest. The Court observes that, in any event, the main thrust of the applicant's grievance was his persecution by the Uzbek authorities in connection with charges of serious criminal offences punishable by long prison terms, and a risk of ill treatment in custody. The Court reiterates in this connection that, whilst a person's failure to seek asylum immediately after arrival in another country may be relevant for the assessment of the credibility of his or her allegations, it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion. The Court notes that in the present case the domestic authorities' findings as regards the failure to apply for refugee status in due time did not, as such, refute his allegations under Article 3 of the Convention. The mere fact that the applicant failed to submit accurate information on some points does not mean that his central claim, namely that he faces a risk of ill-treatment in Uzbekistan, is unsubstantiated. The Court stresses that the Russian courts in the present case failed to explain how the flaws detected by them undermined the applicant's central claim. The courts placed specific emphasis on the failure to apply for refugee status in a timely manner, and otherwise summarily rejected the applicant's detailed arguments for lack of evidence of the risk of ill-treatment, without providing any additional details in support of their arguments. The applicant's submissions concerning the general human rights situation in Uzbekistan received no assessment by the courts. Instead, the domestic courts in the extradition proceedings readily accepted the assurances provided by the Uzbek authorities as a firm guarantee against any risk of the applicant being subjected to ill-treatment after his extradition. In the Court's view, it was incumbent on the domestic courts to verify that such assurances were reliable and practicable enough to safeguard the applicant's right not to be subjected to ill-treatment by the authorities of that State. However, no such assessment was made in the extradition proceedings. As to the assurances given by the Uzbek authorities and relied on by the Government, the Court considers that they were couched in general terms and no evidence has been put forward to demonstrate that they were supported by any enforcement or monitoring

	mechanism. *[paras. 196, 197, 199 and 205]* 2. The applicant's house arrest amounted to a deprivation of liberty within the meaning of Article 5 of the Convention. It was incumbent on the applicant to lodge an ordinary appeal against the initial decision of 13 May 2011 ordering his house arrest before raising his grievance under Article 5§1 before the Court. As for the two decisions of 8 July 2010, the Court considers such an overlap between two domestic rulings regrettable. Nonetheless, both decisions clearly provided that the applicant was to be remanded in custody. In any event, there is nothing to suggest that the domestic courts, including the Regional Court on 8 July 2010, did not have competence to decide on the matter, or acted in bad faith, or that they neglected to apply the relevant legislation correctly. *[paras. 238, 243 and 245]* 3. By 2 November 2010, the date of the impugned extension, the extradition order had already become final. Throughout the entire period of detention authorised on 2 November 2010 the extradition proceedings were temporarily suspended pursuant to the application of the interim measure. Otherwise, it was not demonstrated that any new, relevant factors requiring the review of the lawfulness of the applicant's detention had actually arisen in the interval between the latest extension order and the change of the preventive measure on 13 May 2011. Having regard to the above circumstances of the present case, and in the absence of further information or comments by the parties, the Court does not consider that the length of the interval between the latest extension granted on 2 November 2010 and the proceedings of 13 May 2011, when the preventive measure in respect of the applicant was changed, was unreasonable. *[para. 273]*
Kasymakhunov v. Russia No.: 29604/12 Type: Judgment Date: 14 November 2013 Articles: Y: 3, 34; N: 5§1(f) Keywords: – assurances – custody (length) – extradition (custody)	*Circumstances:* Extradition of an asylum seeker from Russia to Uzbekistan for the purposes of prosecution for a number of offences connected with his membership in Hizb ut-Tahrir. Extradition proceedings suspended while the person sought served a sentence of imprisonment in Russia. Following application of interim measure, the applicant disappeared and there were reasons to believe that he was abducted to Uzbekistan. Interim measure not complied with. *Relevant complaints:* 1. If returned to Uzbekistan, the applicant would run a real risk of being subjected to ill-treatment in breach of Article 3 of the Convention. The applicant had brought his fears of ill-treatment in Uzbekistan to the attention of the domestic authorities during the refugee-status and extradition proceedings. However, the domestic authorities had not taken into account the evidence he had submitted 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. Yet, those assurances

– extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	were unreliable on account of the absence of any mechanism of compliance monitoring or any accountability for their breach. 2. The applicant's detention with a view to extradition had been excessively long. The extradition proceedings had lasted for more than eight years and the authorities had therefore had plenty of time to examine the extradition request and to fulfil all necessary formalities while the applicant had been serving his prison term. By resuming the extradition proceedings only after the end of his prison term, the authorities had failed to exercise due diligence and had made him languish in detention for many additional months after he had finished serving his sentence. Although the extradition proceedings had been completed on 18 July 2012, he had not been released until 10 December 2012, after the expiry of the maximum detention period permitted under Russian law. During that period his extradition had been impossible owing to the interim measure indicated by the Court. Given that it had been clear that the proceedings before the Court would not be completed before the expiry of the maximum detention period and that on that day his extradition would still be impossible because of the pending interim measure, his detention from 18 July to 10 December 2012 could not be considered as permissible detention with a view to extradition. 3. As a result of the applicant's removal to Uzbekistan in breach of the interim measure indicated by the Court under Rule 39, the respondent Government had failed to comply with their obligations under Article 34 of the Convention. *Court's conclusions:* 1. The Court is struck by the summary reasoning put forward by the domestic courts and their refusal to take into account materials originating from reliable sources, such as international reports and the Court's case-law. In such circumstances, the Court is not convinced that the issue of the risk of ill-treatment was subjected to rigorous scrutiny in the refugee-status or extradition proceedings. It can be seen from the judicial decisions in the extradition proceedings that, when rejecting the applicant's arguments concerning the risk of ill-treatment in Uzbekistan, the courts gave preponderant importance to the diplomatic assurances provided by the Uzbek authorities. In this regard, the Court reiterates that it has previously cautioned against reliance on diplomatic assurances against torture from States where torture is endemic or persistent. Furthermore, it should be pointed out that even where such assurances are given, that does not absolve the Court from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention. 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 Convention requirements. *[paras. 125 through 127]* 2. The Court agrees with the applicant that certain formalities – such as requests to the Ministry of Foreign Affairs, the Federal Migration Service and the Federal Security Service or requests for assurances from the Uzbek authorities – could have been completed by the authorities in advance while the applicant was still serving his prison term. At the same time, it notes that the applicant himself did not submit an application for refugee status until a month before the end of his prison term. It is significant that the refugee-status proceedings lasted from 10 May 2011 to 1 March 2012, during which time the application was examined by the regional and federal departments of the FMS and subsequently by courts at two levels of jurisdiction. As their outcome could have been decisive for the question of the applicant's extradition, the Court will take into account the conduct of those proceedings for the purpose of determining whether any action was "being taken with a view to extradition". The extradition order was issued on 19 April 2012, less than two months after the application for refugee status was rejected at final instance. The Court finds no evidence of any significant delays in the conduct of the extradition proceedings. As a result of the application of the interim measure, the respondent Government could not remove the applicant to Uzbekistan without being in breach of their obligation under Article 34 of the Convention. During that time the extradition proceedings, although temporarily suspended pursuant to the request made by the Court, were nevertheless in progress for the purposes of Article 5§1(f) of the Convention. The Court observes that after the extradition order in respect of the applicant entered into force he remained in detention for slightly less than five months. That period does not appear to be unreasonably long. *[paras. 168, 169, 171 and 172]* 3. It is significant that the applicant's transfer to Uzbekistan did not take place through the extradition procedure, which had been stayed immediately following the Court's decision of 17 July 2012. While the measures taken to stay the extradition may be indicative of the Government's initial willingness to comply with the interim measures, they cannot, in the Court's view, relieve the State of its responsibility for subsequent events in the applicant's case. The applicant's forced transfer to Uzbekistan would not have been possible without the authorisation, or at least acquiescence, of the Russian authorities. The Court cannot conceive of allowing the respondent State to circumvent an interim measure such as the one indicated in the present case by using another domestic procedure for the applicant's removal to the country of destination or, even more alarmingly, by allowing the applicant to be removed to the country of destination in a manifestly unlawful manner. *[para. 184]*

Chankayev v. Azerbaijan No.: 56688/12 Type: Judgment Date: 14 November 2013 Articles: Y: 13; N: 3 Keywords: – assurances – extradition (effective remedies) – extradition (grounds for refusal) – extradition (temporary surrender) – ill-treatment Links: English only Translations: Czech	*Circumstances:* Extradition of from Azerbaijan to Russia for the purposes of enforcement of a sentence imposed during temporary surrender (extradition originally requested for the purposes of prosecution). Interim measure complied with. *Relevant complaints:* 1. There were serious grounds for believing that the applicant would be subjected to inhuman and degrading treatment in Russia, like many other Chechens who had fought in the war against the federal forces. The Russian authorities' motivation for requesting his extradition was "to exact revenge" on him for his participation in the war. During his temporary extradition in 2006 and 2007, he had been subjected to various forms of ill-treatment in various detention facilities in Dagestan. 2. The domestic extradition proceedings had not constituted an effective remedy whereby the applicant could have challenged his extradition on the grounds of the existence of a risk of torture or ill-treatment in the event of his extradition. *Court's conclusions:* 1. The Court considers that the applicant is not facing the specific risks described in the country reports for Russia. In the present case, the purpose of the requested extradition is for the applicant to serve a sentence of imprisonment already imposed by the Russian criminal courts. If extradited, the applicant would be officially serving his sentence in a State-run penal facility for convicted prisoners (a prison or a correctional facility). There is a possibility he would be placed in a correctional facility far from the North Caucasus for security reasons, as was the reported practice in respect of many offenders from that region. Accordingly, the applicant is not facing a mere deportation to Chechnya or other areas in the North Caucasus, nor is it likely that he would be placed in a remand prison or other pre-trial detention facility, or in a secret prison. As for any risk of ill-treatment in a penal facility for convicted prisoners, the Court notes that various country reports, obtained by it *proprio motu*, state that conditions in prisons and detention centres across Russia vary but are sometimes harsh, specifying such conditions as overcrowding, limited access to health care, food shortages, abuse by guards and inmates, and inadequate sanitation. However, it appears that those problems are reported in remand prisons in which only remand prisoners are accommodated. Moreover, none of these reports mention any noteworthy problems in connection with the treatment and detention conditions afforded in correctional facilities in general or, in particular, any incidents involving former Chechen rebels or other persons of Chechen origin. The Court itself has had to deal with a large number of applications concerning conditions of detention in various custodial facilities in Russia. However, the absolute majority of applications lodged with the Court where it has found a violation of Article 3 have concerned remand prisons. By contrast, no serious structural problems have yet

	been identified in respect of conditions of detention in post-conviction facilities such as correctional colonies or prisons, where the applicant would be serving his sentence. Based on the available material, the Court considers that it has not been shown to the required standard of proof that the situation in Russian penal facilities for convicted prisoners is such as to call for a total ban on the extradition of convicted prisoners to that country. While the applicant was eventually convicted of participation in military operations against the federal forces, it appears that he was not found to have had any prominent role in the Second Chechen War. As to the alleged ill-treatment during his temporary extradition in 2006 and 2007, the Court notes, firstly, that the applicant's description of the alleged ill-treatment was brief, sketchy and lacking detail. Secondly, after his return to Azerbaijan in July 2007 and knowing full well that another set of extradition proceedings awaited him in the future, he did not raise any complaints with the Azerbaijani authorities concerning the alleged ill-treatment and did not seek a forensic examination immediately or soon after his return, in order to confirm any injuries. In such circumstances, the Court finds that the applicant has not been able to convincingly substantiate his claims that he was previously subjected to ill-treatment in Russia. In any event, the Court notes that, as noted above, the relevant date for the assessment of the risk of ill-treatment in the present case is that of the Court's consideration of the case and, as has already been stated, the applicant is currently in a different situation compared to the first, temporary extradition in 2006. *[paras. 71 through 76 and 78]* 2. Despite the fact that the applicant had explicitly complained before the Sabayil District Court and the Baku Court of Appeal of the risk of torture or ill-treatment and that his allegations in this regard were arguable, the domestic courts ignored his arguments and their decisions were silent in this regard. *[para. 93]*
Latipov v. Russia No.: 77658/11 Type: Judgment Date: 12 December 2013 Articles: N: 3, 5§1, 34 Keywords: – assurances – custody (lawfulness) – extradition (custody)	*Circumstances:* Extradition of an unsuccessful asylum seeker from Russia to Tajikistan for the purposes of prosecution. Interim measure complied with, however, during the proceedings the applicant disappeared and there were reasons to believe that he was abducted to Tajikistan. *Relevant complaint:* If extradited to Tajikistan, the applicant would be at risk of torture and ill-treatment. The national authorities failed to examine the evidence, from independent sources, relating to the human rights situation in Tajikistan. Similarly, in deciding to extradite the applicant, the national authorities failed to assess the risk of being subjected to ill-treatment in Tajikistan, taking into account both the general situation of the country and the his personal circumstances. By asking the applicant to provide "indisputable evidence" of a risk of ill-treatment in Tajikistan, the Volgograd Regional Court placed on him a disproportionate burden of proving the existence of a future event. The diplomatic assurances given by Tajikistan that the applicant

– extradition (grounds for refusal) – ill-treatment – interim measure Links: French only Translations: not available	would not be subject to treatment contrary to Article 3 of the Convention and on which the Russian authorities based their extradition decision did not provide a sufficient guarantee of protection against such a risk. *Court's conclusions:* The Government has placed a disproportionate amount on the assurances given by the Tajik authorities. Formulated in general terms, these assurances do not provide for mechanisms, either diplomatic or based on the intervention of observers, to ensure objective control of their observance. The Government's statement that the Tajik authorities never failed to comply with their assurances does not satisfy the Court. The Court is not persuaded by the applicant's argument that the national court imposed a disproportionate burden on him by asking him to provide "indisputable evidence" of a risk of ill-treatment in Tajikistan. The Court is of the opinion that, in the present case, this request merely required the applicant to provide information relating to his personal circumstances which suggested that such a risk existed and could, in the event of his dismissal, and not, as he complains, to impose on him the burden of proving the existence of a future event. *[paras. 96 and 103]* *[NOTES: The Court's conclusions regarding the applicant's complaint concerning the lawfulness of his custody are based on the Government's implicit admission that his detention in the relevant time period was not in accordance with the law and, therefore, have not been included in this summary. The Court's conclusions regarding the applicant complaint concerning lawfulness of his abduction to Tajikistan have not been included in this summary because according to the Court, the alleged involvement of Russian authorities had not been sufficiently proven.]*
Zarmayev v. Belgium No.: 35/10 Type: Judgment Date: 27 February 2014 Articles: N: 3, 6 Keywords: – assurances – extradition (grounds for refusal) – fair trial – ill-treatment Links: French only Translations: Czech	*Circumstances:* Extradition of an unsuccessful asylum seeker from Belgium to Russia for the purposes of prosecution on charges of complicity in murder. Interim measure complied with. *Relevant complaint:* The applicant's extradition to Russia would expose him to torture and treatment contrary to Article 3 of the Convention on account of his active military involvement in the Second Chechen War. He contended that the official reasons for which he was being prosecuted and his extradition was sought had been completely fabricated. He was in fact pursued solely for political reasons related to his past as a combatant. *Court's conclusions:* The applicant's version of the facts has changed considerably over time and whenever the opportunity arose, he has provided a version, in whole or in part, different from the previous and added information that did not relate to his previous statements. The same is true of the account he gave to the Court in his observations in reply to the Government, which refer to very specific facts and events which the applicant obviously could have submitted before to the Belgian authorities. The fact that the applicant refers to them for the first time before the Court only adds to the unlikelihood of his past as a combatant. The only reason given by the applicant to explain the inconsistencies between his accounts is that he suffered from a

	post-traumatic stress syndrome for which he was treated medically. This would have resulted in problems of concentration and memory. The Court considers that the Belgian authorities were able to dismiss this explanation, which is manifestly insufficient to justify said inconsistencies and contradictions. The Court further observes that a certain period of time has elapsed since the events which the applicant alleges to have caused his departure from the Russian Federation. The applicant does not in any way state that he would have continued to receive the negative attention of the Russian authorities for reasons other than those of the extradition request. These considerations lead the Court to conclude that it has no reason to depart from the analysis made by the Belgian authorities that there are no serious and well-founded reasons to believe that the applicant would be exposed to a real risk of ill-treatment in Russia as a former combatant serving the Chechen cause. The Russian authorities provided their Belgian counterparts with several precise assurances as to the respect to the applicant's human rights. The Minister of Justice and then the Council of State concluded, after careful and diligent examination of these assurances and based on the case-law of the Court that they were sufficient to preclude the applicant's risk of being subjected to treatment prohibited by Article 3 of the Convention. *[paras. 101, 102, 105, 106, 109 and 111]*
M. G. v. Bulgaria No.: 59297/12 Type: Judgment Date: 25 March 2014 Articles: Y: 3 Keywords: – assurances – asylum – extradition (grounds for refusal) – ill-treatment Links: French only Translations: Bulgarian, Czech, Turkish	*Circumstances:* Extradition of a person, who had previously been granted asylum in Poland and Germany, from Bulgaria to Russia for the purposes of prosecution (in Ingushetia) for participation in an armed group, preparation of terrorist acts and trafficking in weapons and toxic substances. Interim measure complied with. *Relevant complaint:* The applicant was prosecuted for participation in the Second Chechen War and if handed over to the Russian authorities, he would be detained in a penitentiary in the North Caucasus (where a widespread situation of insecurity in the North Caucasus, marked by serious violations of the human rights of the human person, exists) and, moreover, would be handed over to the FSB officers in charge of the criminal investigation in question; therefore, he would be exposed to a real and serious risk of physical violence, torture or other inhuman or degrading treatment. The recognition of refugee status under the Geneva Convention by one of the signatory States obliges all the other signatory States to respect the principle of non-refoulement and not to deliver the beneficiary of this status to the authorities of the State where the person would be threatened with persecution. The assurances given by the Russian prosecutor's office to the Bulgarian authorities during the extradition proceedings cannot be sufficient to eliminate the risk of ill-treatment in the event of his surrender to the Russian authorities – the assurances were general declarations and the Russian central authorities had considerable difficulties in enforcing human rights standards in the North Caucasus; furthermore, mistreatment was commonplace in Russian prisons and there had been no examples of cooperation between the Russian authorities and Bulgarian diplomats in similar cases. If his

	extradition had been carried out, the nearest Bulgarian diplomatic representatives who could have ensured compliance with the undertakings given by the Russian authorities in respect of him would have been in Moscow, i. e. at a considerable distance from his place of detention. *Court's conclusions:* In the light of information available to it, the Court can only observe that the Northern Caucasus, including Ingushetia, continues to be a zone of armed conflict marked by violence and insecurity and by serious violations of fundamental human rights, such as extrajudicial killings, enforced disappearances, torture or other inhuman and degrading treatment, or the collective punishment of certain groups of the local population. That being so, the Court must consider whether the applicant's individual situation is such that he may fear being subjected to treatment contrary to Article 3 of the Convention if he were extradited to the Russian Federation. The Court reiterates that it is not its task to interpret Bulgarian domestic law concerning the granting of refugee status and political asylum. It is not its role to answer the question whether the decision to grant refugee status taken by the authorities of a State Party to the Geneva Convention must be interpreted as conferring on the person concerned the same status in all the other State Parties of said Convention. Nor does it have the task of making a formal decision on compliance with the legislative acts of the institutions of the European Union with regard to asylum and equivalent protection. However, for the purposes of examining the present case, the Court considers that it must take account of the applicant's granting of refugee status in the two other European States mentioned above. It points out that this is an important indication that, at the time when that status was granted to the person concerned, respectively in 2004 and 2005, there was sufficient evidence to show that he was at risk of being persecuted in his country of origin. It considers, however, that this is only a starting point for its analysis of the applicant's current situation. The Court observes that the applicant states that he is wanted by the Russian authorities because of his participation in the Chechen guerrillas and that he has adopted the same position in the context of the domestic extradition procedure. It notes that these allegations are amply corroborated by the other documents in the file and in particular by those sent by the Russian authorities to the Bulgarian authorities in connection with the extradition proceedings. The Court does not lose sight of the fact that in the present case the assurances in question were given by the Office of the Attorney-General of the Russian Federation, a State Party to the Convention. It considers, however, that in the specific circumstances of the present case these assurances cannot be sufficient to eliminate the risk of ill-treatment incurred by the applicant. It observes, in particular, that the international reports available to it indicate that persons accused of belonging to the armed group in the North Caucasus, like the applicant, are often subjected to torture while in detention and that the competent Russian authorities often fail to carry out effective investigations into allegations of ill-treatment in pre-trial detention facilities in the North Caucasus. It also notes that the Government has not specified what

	concrete steps it would take to ensure compliance with the commitments of the Russian authorities or whether its diplomatic services had in the past cooperated with the Russian authorities in similar cases of extradition to the North Caucasus. *[paras. 87 through 89 and 94]*
Oshlakov v. Russia No.: 56662/09 Type: Judgment Date: 3 April 2014 Articles: Y: 5§1, 5§4; N: 3, 5§4 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition of an unsuccessful asylum seeker from Russia to Kazakhstan for the purposes of prosecution on charges of murder and banditry. Interim measure complied with. *Relevant complaint:* The applicant's extradition to Kazakhstan would breach Article 3 of the Convention. He claimed that the Kazakhstan authorities had deprived him of his property, which, in his view, proved that the rule of law was not respected in the requesting country. The Russian authorities had refused to examine his complaints of deprivation of property although, in his view, it was clear that the Kazakhstan police would do everything in their power to retain the property they had stolen from the applicant, including possible attempts at "getting rid" of him with the help of criminals. The applicant further submitted in general terms that "ill-treatment of detainees was a recurrent problem in Kazakhstan", without providing any details or proof. The diplomatic assurances given by the Kazakhstan authorities had been, in the applicant's submissions, belated. *Court's conclusions:* The Court observes has already found that although international reports have continued to voice serious concerns as to the human rights situation in Kazakhstan, there is no indication that the situation is grave enough to call for a total ban on extradition to that country. Moreover, the reports by Human Rights Watch and Amnesty International on the general human rights situation in Kazakhstan in 2013 refer only to instances of ill-treatment attributable to the authorities that concerned individuals involved in the protests of 2011 in Zhanaozen and political opponents of the governing party. The applicant has never claimed to belong to either of those groups. It is not evident from the materials at the Court's disposal that the applicant belongs to any other vulnerable group susceptible to be ill-treated in the requesting country. The applicant's allegations that any detainee in Kazakhstan runs a risk of ill-treatment are too general and cannot be understood as revealing any particular risk for him arising from his individual situation. His claims of being targeted by unnamed Kazakhstan policemen who had, in his submission, deprived him of his property, are not supported by any relevant evidence. Considering that the applicant has not demonstrated that he would face any real risk of ill-treatment if extradited, the Court does not deem it necessary to assess the diplomatic assurances given by the Kazakhstan authorities. *[paras. 85, 86, 87 and 90]* *[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. Abdulkhakov v. Russia) and, therefore, have not been included in this summary.]*
Gayratbek Saliyev	*Circumstances:* Extradition of an unsuccessful asylum seeker of ethnic Uzbek origin from Russia to the

v. Russia No.: 39093/13 Type: Judgment Date: 17 April 2014 Articles: Y: 3, 5§4 Keywords: – assurances – custody (judicial review) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	Kyrgyz Republic for the purposes of prosecution on charges of serious violent crimes committed in the course of the inter-ethnic rioting in June 2010. Interim measure complied with. *Relevant complaints:* 1. Due to the applicant's Uzbek ethnic origin, he would face a real risk of ill-treatment if extradited to Kyrgyzstan. He belongs to a specific group, namely, ethnic Uzbeks suspected of involvement in the violence of June 2010, the members of which are systematically tortured by the Kyrgyz authorities. His arguments concerning the risk of being subjected to ill-treatment in the requesting country had not received genuine and thorough consideration by the Russian authorities. The diplomatic assurances relied on by the Government could not suffice to protect him against the risks of ill-treatment in the light of the criteria established in the case of Othman (Abu Qatada) v. the United Kingdom. The Government's claim that other individuals extradited to Kyrgyzstan had been visited by Russian diplomatic staff had not been supported by any evidence. No independent monitoring procedure by an independent body had been set up and Russian diplomatic staff could not be considered sufficiently independent to ensure effective follow-up of Kyrgyzstan's compliance with their undertakings. 2. The appeal proceedings in respect of the detention orders had not been speedy and effective. He further complained that he had not had a legal remedy at his disposal enabling him to apply for judicial review of his detention on his own initiative following new developments in his extradition case, in particular, following the indication of interim measures by the Court. *Court's conclusions:* 1. As is clear from the reports by UN bodies and reputable NGOs, in 2012-13 the situation in the southern part of Kyrgyzstan had not improved. Various reports are consistently in agreement when describing biased attitudes based on ethnicity in investigations, prosecutions, condemnations and sanctions imposed on ethnic Uzbeks charged and convicted in relation to the events in Jalal-Abad Region, as well as a lack of full and effective investigations into the numerous allegations of torture and ill-treatment imputable to Kyrgyz law-enforcement agencies, arbitrary detention and excessive use of force against Uzbeks allegedly involved in the events of June 2010. Accordingly, the Court concludes that the current overall human rights situation in Kyrgyzstan remains highly problematic. Given the widespread use by the Kyrgyz authorities of torture and ill-treatment in order to obtain confessions from ethnic Uzbeks charged with involvement in the inter-ethnic riots in the Jalal-Abad Region, which has been reported by both UN bodies and reputable NGOs, the Court is satisfied that the applicant belongs to a particularly vulnerable group, the members of which are routinely subjected to treatment proscribed by Article 3 of the Convention in the requesting country. As for the extradition proceedings, the Court is struck by the summary reasoning put

	forward by the domestic courts and their refusal to take into account materials originating from reliable sources, such as reports by international NGOs, or an expert opinion based on them. It is noteworthy that the Moscow City Court, when upholding the extradition order for the reason that the applicant had failed to substantiate his allegations of risks of ill-treatment, mainly referred to the decisions on the applicant's application for refugee status that had clearly failed to touch upon the issue of such risks. The Supreme Court of Russia, in turn, dismissed the applicant's allegations for the reason that Kyrgyzstan had provided diplomatic assurances against ill-treatment. In such circumstances, the Court is not convinced that the issue of the risk of ill-treatment was subjected to rigorous scrutiny in the refugee status or extradition proceedings. It has not been demonstrated before the Court that Kyrgyzstan's commitment to guaranteeing access to the applicant by Russian diplomatic staff would lead to effective protection against proscribed ill-treatment in practical terms, as it has not been shown that the aforementioned staff would be in possession of the expertise required for effective follow-up of the Kyrgyz authorities' compliance with their undertakings. Nor was there any guarantee that they would be able to speak to the applicant without witnesses. In addition, their potential involvement was not supported by any practical mechanism setting out, for instance, a procedure by which the applicant could lodge complaints with them or for their unfettered access to detention facilities. The Government's claim that unnamed individuals have been visited in Kyrgyzstan after their extradition has not been supported by any evidence and thus cannot be considered as an illustration of the existence of a monitoring mechanism in the requesting country. *[paras. 61, 62, 63 and 66]* 2. The Court does not find any indication to suggest, that any delays in the examination of the applicant's appeals against the detention orders mentioned above can be attributable to his conduct. In the absence of any explanation capable of justifying such delays put forward by the Government, the Court considers that the amount of time it took the Moscow City Court to examine the applicant's appeals against the first-instance detention orders in the present case, namely, forty seven and fifty-one days, can only be characterised as inordinate. This is not reconcilable with the requirement of "speediness", as set out in Article 5§4 of the Convention. *[para. 79]*
Ismailov v. Russia No.: 20110/13 Type: Judgment Date: 17 April 2014 Articles: Y: 3, 5§4	*Circumstances:* Expulsion of an asylum seeker from Russia to Uzbekistan. The person was originally arrested with view to extradition but extradition was denied because his prosecution had become time barred under Russian law. Interim measure complied with. *Relevant complaints:* 1. The applicant complained, under Article 3 of the Convention, that his extradition or administrative

Keywords: – expulsion – ill-treatment – relation between extradition and deportation or expulsion Links: English only Translations: not available	removal to Uzbekistan would expose him to ill-treatment. The administrative-removal proceedings had been used by the authorities in order to circumvent the guarantees available to the applicant in extradition proceedings. 2. The applicant's arrest for the purpose of expulsion had been ordered in order to circumvent the requirements of the domestic law, which prescribed a maximum time limit for detention pending extradition. *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. Any such allegation always concerns an eventuality, something which may or may not occur in the future. Consequently, such allegations cannot be proven in the same way as past events. The applicant must only be required to show, with reference to specific facts relevant to him and to the class of people he belongs to, that there was a high likelihood that he would be ill-treated. Even though detailed submissions to that effect were made by the applicant in the present case, the authorities rejected them for lack of evidence that the charges were politically motivated. *[para. 81]* 2. Especially in the absence of any reasoning in the detention order, the Court does not consider it necessary to assess whether the purported reason for the applicant's detention differed from the real one in the present case, for the following reason. Even where the purpose of the detention is legitimate, its length should not exceed that reasonably required for the purpose pursued. The Court notes that in the present case the applicant's detention consisted of two periods. First, he was detained for six months with a view to extradition before the authorities ordered his detention pending removal. Second, his detention pending removal has lasted for about one year to date. The question is whether that duration is reasonable. As regards the six-month detention pending extradition, the Court is satisfied that the requirement of diligence was complied with, given that both the extradition and asylum proceedings were pending throughout the entire period in question, with no particular delays attributable to the authorities. As regards the period from 13 March 2013 onwards, pending the enforcement of the administrative removal order, the applicant's detention during that time was mainly attributable to the temporary suspension of the enforcement of the extradition and expulsion orders due to the indication made by the Court under Rule 39 on 22 March 2013. *[para. 112 through 114]*
László Magyar	*Circumstances:* Life sentence served in Hungary with no parole eligibility.

v. Hungary No.: 73593/10 Type: Judgment Date: 20 May 2014 Articles: Y: 3, 6§1 Keywords: – ill-treatment – life sentence Links: English only Translations: Turkish	*Relevant complaint:* The whole life term was neither *de iure* nor *de facto* reducible and thus violated Article 3 of the Convention. The clemency decision of the President of the Republic had to be counter-signed by the Minister of Justice. Such clemency was therefore a purely discretional political decision not governed by any provision of law concerning its merits. The decision on clemency completely lacked foreseeability and that the whole procedure was completely impenetrable as neither the President nor the Minister was obliged to give reasons for the decision. *Court's conclusions:* The Court is not persuaded that the institution of presidential clemency, taken alone (without being complemented by the eligibility for release on parole) and as its regulation presently stands, would allow any prisoner to know what he or she must do to be considered for release and under what conditions. In the Court's view, the regulation does not guarantee a proper consideration of the changes and the progress towards rehabilitation made by the prisoner, however significant they might be. The Court is therefore not persuaded that, at the present time, the applicant's life sentence can be regarded as reducible for the purposes of Article 3 of the Convention. *[para. 58]*
Akram Karimov v. Russia No.: 62892/12 Type: Judgment Date: 28 May 2014 Articles: Y: 3, 5§1(f), 5§4; N: 5§1(f) Keywords: – assurances – expulsion – ill-treatment – relation between extradition and deportation or expulsion Links: English only Translations: not available	*Circumstances:* Expulsion of an asylum seeker from Russia to Uzbekistan following denial of his extradition (for lack of dual criminality) for the purposes of prosecution for incitement to national, racial, ethnic or religious hatred, and producing and disseminating documents containing threats to national security and public order. Interim measure complied with. *Relevant complaint:* If expelled to Uzbekistan, the applicant submitted that the FMS had failed to properly assess his arguments and that its reliance on the assurances provided by Uzbekistan in the extradition proceedings was insufficient. The applicant also pointed out that the very reliance on such assurances within the administrative proceedings demonstrated that his expulsion constituted extradition in disguise. He further maintained that the NGO reports on the situation in Uzbekistan constituted reliable evidence as to the high risk of treatment contrary to Article 3 of the Convention, especially taking into account that he was suspected of being a member of an extremist religious group. *Court's conclusions:* The existence of domestic laws and international treaties guaranteeing respect for fundamental rights is not in itself 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. Furthermore, the domestic authorities, as well as the Government before the Court, used summary and non-specific reasoning in an attempt 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. As to the assurances given by the Uzbek authorities and

	relied on by the Government, apart from being couched in general terms and uncorroborated by any evidence of being supported by any enforcement or monitoring mechanism, the Court found that they were given for the purposes of extradition proceedings that were ultimately discontinued and as such are of no direct relevance to expulsion proceedings. *[paras. 132 and 133]* *[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. Shakurov v. Russia, Nasrulloyev v. Russia or Ismoilov and others v. Russia) and, therefore, have not been included in this summary.]*
Harakchiev and Tolumov v. Bulgaria No.: 15018/11 & 61199/12 Type: Judgment Date: 8 July 2014 Articles: Y: 3, 13 Keywords: – ill-treatment – life sentence Links: English, French Translations: Albanian, Armenian, Azerbaijani, Bulgarian, Georgian, Macedonian, Romanian, Serbian, Swedish, Turkish, Ukrainian	*Circumstances:* "Whole life sentence" served in Bulgaria with eligibility for release on parole after 40 years (since the abolition of the death penalty, Bulgarian law has provided for three types of custodial penalty: imprisonment for a fixed period of up to thirty years, life imprisonment with the possibility of commutation, and "whole life imprisonment" without the possibility of commutation). *Relevant complaint:* The sentence of whole life imprisonment had amounted, from the time of its imposition, to inhuman and degrading punishment in breach of Article 3 of the Convention. The exercise of the presidential power of clemency was unclear and unpredictable. *Court's conclusions:* If the current and future Presidents and Vice-Presidents continue to exercise the power of clemency in line with the precepts laid down by the Constitutional Court in 2012 and with the practices adopted in the same year, the applicant's whole life sentence can be regarded as de facto reducible, and since that time he can be regarded as knowing that there exists a mechanism which allows him to be considered for release or commutation of sentence. It is true that some of the applicable rules are not laid down in the Constitution or in a statute, but in a presidential decree. It is not the Court's task to prescribe the form which the requisite review should take. However, in the present case, in spite of some variations in his prison regime, in practice the applicant remained in permanently locked cells and isolated from the rest of the prison community, with very limited possibilities to engage in social contact or work, throughout the entire period of his incarceration. The deleterious effects of that impoverished regime, coupled with the unsatisfactory material conditions in which the applicant was kept, must have seriously damaged his chances of reforming himself and thus entertaining a real hope that he might one day achieve and demonstrate his progress and obtain a reduction of his sentence. To that should be added the lack of consistent periodical assessment of his progress towards rehabilitation. In view of the foregoing considerations, the Court concludes that there has been a breach of Article 3 of the Convention. *[paras. 261, 266 and 267]*
Rakhimov v. Russia No.: 50552/13	*See the summary of the similar case of Ismailov v. Russia (count 1).*

Type: Judgment Date: 10 July 2014 Articles: Y: 3, 5§1, 5§1(f). 5§4 Keywords: – expulsion – ill-treatment Links: English only Translations: not available	
Kadirzhanov and Mamashev v. Russia Nos.: 42351/13 & 47823/13 Type: Judgment Date: 17 July 2014 Articles: Y: 3, 5§4; N: 5§4 Keywords: – assurances – custody (judicial review) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*
Mamadaliyev v. Russia	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*

No.: 5614/13 Type: Judgment Date: 24 July 2014 Articles: Y: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	
Čalovskis v. Latvia No.: 22205/13 Type: Judgment Date: 24 July 2014 Articles: Y: 3, 5§1, 5§4; N: 3 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: Czech	*Circumstances:* Extradition of a Latvian national from Latvia to the United States of America for the purposes of prosecution on charges of cybercrime-related offences (bank fraud, wire fraud, access device fraud, computer intrusion and aggravated identity theft). Interim measure complied with. *Relevant complaints:* 1. The applicant complained that during the hearing on 6 December 2012, he had been placed in a dock with metal bars, with the hood of his jacket over his head as instructed by the police, and that the media had published photographs of this. He argued that his placement in a metal cage during the hearing, in combination with the said media exposure, had amounted to degrading treatment in violation of Article 3 of the Convention. 2. If extradited to the United States, the applicant would be subjected to torture and a disproportionate prison sentence (up to sixty-seven years, while the maximum prison sentence in Latvia would be ten years), in breach of Article 3 of the Convention. The national authorities had not examined the probability of his being subjected to treatment contrary to Article 3 of the Convention if extradited to the United States and had not obtained adequate assurances in that regard. The applicant referred to the statements by United States officials that cybercrime was perceived to be a threat to the United States' security. Those statements, in the applicant's view, gave rise to the same concerns with respect to his treatment as those in relation to terrorism suspects. 3. The applicant submitted that the domestic courts, when authorising his detention, had not assessed, in violation of Article 5§1 of the Convention, whether reasonable suspicion existed that he had committed

	the offences for which his extradition to the United States was sought. 4. In violation of Article 5§4 of the Convention, the United States' extradition request had been served on the applicant less than thirty minutes before the detention hearing and that he and his lawyer had not had adequate time to prepare for the detention hearing. 5. Following the detention hearing, the applicant did not have at his disposal a procedure by which the lawfulness of his detention could be assessed by a court, as no review of the pre-extradition detention was available under the domestic law. *Court's conclusions:* 1. The Court notes that no evidence before it attests to the applicant's having a criminal record, he was not suspected of having committed a violent crime, he was not placed in the metal cage because he posed a risk to order or security in the courtroom, because it was thought that he might resort to violence or abscond, or because there was a risk to his own safety. The dock with metal bars was a permanent installation in courtroom no. 213 and the applicant was placed there by the simple fact that it was the seat where he, as a person on whose extradition a decision had to be made, was meant to be seated. Even though the hearing had not been broadcast live, photographs depicting the applicant behind metal bars were published soon after the hearing. The Government's argument that the media coverage had mostly been induced by the applicant and his defence team is immaterial. The applicant was exposed behind bars not only to those attending the hearing for approximately an hour but also to a much larger public who were following the proceedings in the media. Although the applicant had not been handcuffed and special security forces were not present, the Court considers that given their cumulative effect, the security arrangements in the courtroom were, in the circumstances, excessive and could have been reasonably perceived by the applicant and the public as humiliating. *[paras. 103 through 107]* 2. The applicant is not suspected of terrorism-related offences and no reliable information has been furnished to the Court in relation to practices on the part of the United States authorities with regard to persons suspected of cybercrime-related offences. The statements of the United States officials relied upon by the applicant do not reveal such practices or any possible action with respect to the applicant in particular so as to raise concern for his well-being in the context of Article 3 of the Convention. The Court reiterates that due regard has to be had for the fact that sentencing practices vary greatly between States and that there are often legitimate and reasonable differences between States as to the length of sentences imposed, even for similar offences. The applicant's argument based on a comparison of the penalties applicable in the United States and Latvia is not in itself sufficient to demonstrate a "gross disproportionality", which is a strict test that will only be met on "rare and unique occasions". *[paras. 137, 141 and 142]*

	3. The Court observes that paragraph 3(c) of Article 7 of the Extradition Treaty requires that the extradition request include "such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is sought". It remains unclear whether the investigating judge satisfied himself of the requirement under paragraph 3 of Article 7 of the Extradition Treaty, as that neither emerges from the investigating judge's reasoning nor the formal grounds he relied upon. The Court notes that the investigating judge merely agreed with the prosecutor's proposal on detention. At the same time, he did not respond to the applicant's submission that the accusation against him was vague. The Court considers that the competent domestic court has not acted fully in accordance with section 702(1) of the Criminal Procedure Law in not having had regard as to whether the extradition request complied with paragraph 3(c) of Article 7 of the 2005 US-Latvia Extradition Treaty. *[paras. 186, 189 and 190]* 4. The applicant's lawyer was informed of the detention hearing one day in advance. There is no indication that, having received that information, he requested access to the material in order to prepare for the hearing. While, indeed, it may be doubtful whether a period of thirty minutes was sufficient to study the material, it transpires that the applicant's lawyer and the applicant himself were able to present their argument with regard to the content of the extradition request. In addition, the applicant said that he had read all the documents. Moreover, the applicant and his lawyer did not ask the investigating judge for any additional time for preparation. In that light, the Court is unable to accept the applicant's argument that his lawyer adequately raised the issue of access to the material. *[paras. 198 and 201]* 5. The Court is unable to accept that a complaint to an investigating judge was a sufficiently certain remedy available to the applicant to institute proceedings for the examination of the lawfulness of his detention. *[paras. 227]*
Kaplan and Others v. Norway No.: 32504/11 Type: Judgment Date: 24 July 2014 Articles: Y: 8 Keywords: – expulsion – family life (separation of	*Circumstances:* Expulsion of an unsuccessful asylum seeker from Norway to Turkey. The applicant's family members (wife, children, one of them suffering from psychiatric problems within the spectrum of autism illnesses) allowed to stay in Norway. *Relevant complaint:* The applicant's removal to Turkey, ordered together with a five-year ban on re-entering Norway, would have resulted in his separation from his family, who had been granted leave to remain in Belgium and who (especially the daughter suffering from psychiatric problems within the spectrum of autism illnesses) could not follow him to Turkey. *Court's conclusions:* Having regard to the youngest child's long-lasting and close bonds to her father, her special care needs and the long period of inactivity before the immigration authorities issued a warning to the first applicant and took their decision to order his expulsion with a re-entry ban, the Court is not convinced in

family) Links: English only Translations: Icelandic	the concrete and exceptional circumstances of the case that sufficient weight was attached to the best interests of the child for the purposes of Article 8 of the Convention. *[para. 98]*
Tershiyev v. Azerbaijan No.: 10226/13 Type: Judgment Date: 31 July 2014 Articles: Y: 13; N: 3 Keywords: – extradition (effective remedies) – extradition (grounds for refusal) – extradition (temporary surrender) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Azerbaijan to Russia for the purposes of prosecution for participation in an illegal armed unit operating in Chechnya. As the person sought at the time of the request served a sentence of imprisonment in Azerbaijan, his temporary surrender was also requested and granted. Interim measure complied with. *Relevant complaints:* 1. The Russian prosecution authorities had "false intentions", demonstrated by the fact that the criminal proceedings against him had not been instituted in Russia until after his conviction in Azerbaijan, even though the criminal offences of which he was accused had been allegedly committed during the period 2000 to 2007. In support of his argument that there was an imminent risk of him being tortured or killed, the applicant referred to the case Chankayev v. Russia. There was no monitoring mechanism existing between Azerbaijan and Russia which would allow each State to monitor the other's compliance with assurances given in respect of ill-treatment in extradition cases. 2. The domestic extradition proceedings had not constituted an effective remedy by which the applicant could have challenged his extradition on the grounds that he would risk being subjected to torture or ill-treatment if extradited. *Court's conclusions:* 1. The applicant is subject to "temporary extradition" under the Minsk Convention for a period of three months, which can be extended if there are "well-grounded reasons". Pursuant to the procedure prescribed by Article 64 of the Minsk Convention, Russia is under an obligation to return him to Azerbaijan after completing the necessary procedural steps for which the extradition was requested. In the absence of concrete evidence to the contrary, the Court considers that, in practical terms, the obligation to return a temporarily extradited person should be assessed as a factor reducing the risk of ill-treatment in the receiving State. The applicant does not appear to have been a prominent figure in the Second Chechen War. He had apparently been in a supporting role. As to the statement by the Chechen Refugee Council in Azerbaijan submitted by the applicant in support of his case, the Court notes that, as mentioned above, although it purports to show that there was a pattern of ill-treatment and disappearances of Chechens extradited or abducted to Russia from Azerbaijan, the list lacks a reasonably minimal degree of necessary detail for it to be accepted by the Court as *prima facie* relevant and reliable. *[paras. 56 through 58]*

	2. However scant the applicant's submissions might have been, he explicitly complained that he would be subjected to a risk of torture or ill-treatment and pointed out the general precarious situation of former rebels in Chechnya. In the present case, that was sufficient to show that his allegations in this regard were arguable and should have been examined. It does not appear that the courts took these considerations into account when they examined the question of the applicant's extradition, even though they were required to do so not only under the Convention, which was directly applicable in the Azerbaijani legal system, but also under the substantive provisions of the domestic law on extradition detailing the situations in which extradition should be refused. *[para. 72]*
Mamazhonov v. Russia No.: 17239/13 Type: Judgment Date: 23 October 2014 Articles: Y: 3, 34; N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: Turkish	*See the summary of the similar case of Kasymakhunov v. Russia.*
Bodein v. France No.: 40014/10 Type: Judgment Date: 13 November 2014 Articles: N: 3, 6§1 Keywords: – ill-treatment – life sentence	*Circumstances:* Life sentence served in France. *Relevant complaint:* The imposition of life sentence without any possibility of benefiting from an adjustment of punishment or the possibility of release other than through pardon constitutes inhuman and degrading treatment. *Court's conclusions:* Article 720-4 of the French Code of Criminal Procedure provides for judicial review of the life sentence that may be initiated by the public prosecutor or by the convicted person with a view to verifying whether there are still legitimate grounds for continued imprisonment. If the special decision of the Assize Court not to grant any remedial measures is terminated, the applicant will be eligible for these measures, including conditional release. The Court cannot speculate on the results of such a mechanism, for

Links: French only Translations: Czech, Icelandic, Turkish	lack of concrete applications to date, but it can only note that it leaves no uncertainty as to the existence of a "prospect of release" as soon as the conviction has been pronounced. It also observes that the Constitutional Council validated the contested provisions of the Law of 1 February 1994 on the grounds that the sentencing judge could put an end to it "with regard to the conduct of the convicted person and the evolution of their personality". *[para. 60]*
Fozil Nazarov v. Russia No.: 74759/13 Type: Judgment Date: 11 December 2014 Articles: Y: 3 Keywords: – expulsion – ill-treatment Links: English only Translations: not available	*See the summary of the similar case of Ismailov v. Russia (count 1).*
Vlas and Others v. Romania No.: 30541/12 Type: Decision Date: 6 January 2015 Articles: N: 3, 6, 8, 13, 14 Keywords: – discrimination – extradition (effective remedies) – extradition (grounds for refusal)	*Circumstances:* Extradition of a Moldovan citizen, a failed asylum seeker and holder of a special residence permit by reason of her marriage to a Romanian citizen with whom she had a son, also a Romanian citizen, from Romania to Moldova for the purposes of prosecution for participation in organizing a pyramid scheme. At the time of her extradition to Moldova, the applicant was pregnant. Three of the applicant's co-defendants could not be extradited from Romania on account of their Romanian citizenship and, therefore, were prosecuted in Romania. *Relevant complaints:* 1. The applicant's arrest and extradition while seven months pregnant violated amounted to ill-treatment as it caused her severe anxiety aggravated by the absence of adequate medical supervision during her detention. Her second child's anemia was caused by this treatment. 2. The applicant did not benefit from the guarantees of a fair trial during the extradition proceedings – the Court of Appeal and the High Court were not impartial, did not respect the principle of equality of arms and did not recognize her rights of defense.

– extradition (procedure) – fair trial – family life (separation of family) – ill-treatment – nationality Links: French only Translations: not available	3. The applicant's extradition amounted to disproportionate interference with the right of the applicant, her husband and their older child to respect for their family life. They also did not have an effective remedy in order to assert their right to respect for their family life. 4. The applicant's extradition was discriminatory because of her nationality in light of the fact that her three co-defendants were tried in Romania. *Court's conclusions:* 1. According to the medical documents provided by the applicant, her second pregnancy was normal and she gave birth to a second child in Moldova. In the course of the extradition proceedings the applicant was able to raise the arguments relating to her pregnancy before the domestic courts and the High Court, acting in the final instance, held, by a fully reasoned decision, that her extradition could not have an impact on her pregnancy. Her allegations that she did not receive adequate medical care during her extradition and that her second child suffers from anemia as a result of this measure are not supported by any evidence. *[para. 39]* 2. The Court reiterates that an extradition procedure does not involve a challenge to an applicant's civil rights and obligations nor does it relate to the merits of a criminal charge. Moreover, the applicant has not alleged that she is likely to face a flagrant denial of justice in Moldova. Accordingly, Article 6§1 of the Convention does not apply to the extradition proceedings. *[para. 42]* 3. Without contesting the consequences of the first applicant's removal from the Romanian territory where she had already established a family life with the second and third applicants, the Court is of the opinion that the Romanian authorities did not exceed the margin of appreciation provided for by Article 8 and the Court's own case law. The national courts examined these arguments and the Court sees no reason to challenge their findings. As regards the applicant's pregnancy, the Court finds no exceptional circumstances in which the applicants' right to respect for family life would prevail over the legitimate aim pursued by her extradition. It is also clear from the information provided by the applicants that the first applicant gave birth to a second child in Moldova without encountering any difficulties. There is nothing in the file to support the conclusion that the second and third applicants could not have continued their family life in Moldova. Furthermore, the interference with their family life was short-lived, since the first applicant returned to Romania. Accordingly, and taking into account the best interests of the third applicant, who was three years old at the time of the first applicant's extradition, that measure does not appear to be disproportionate to the legitimate aim pursued. The first applicant raised this complaint during the extradition proceedings against her. She was thus able to present to the Court of Appeal and the High Court all its arguments based on her family situation and her second pregnancy. The national courts

	replied to its arguments in a reasoned and convincing manner. In particular, the Court notes that the High Court found, on the basis of the medical documents provided by the applicant, that her extradition could not have serious consequences on her health or pregnancy and that her family situation in Romania was established only after the arrest warrant was issued against her. Therefore, the applicants have had an effective remedy in order to assert their right to respect for their family life. *[paras. 46 through 50, 55 and 56]* 4. The applicant's three co-defendants of Romanian nationality were tried by the Romanian courts in accordance with the provisions of the Treaty between Romania and the Republic of Moldova on Legal Assistance in Civil and Criminal Matters and those of Act No. 302/2004 which prohibit, in principle, extradition of Romanian nationals from Romania. Consequently, the Court is not satisfied that the first applicant and her three co-defendants of Romanian nationality were in similar situations. Articles 22 and 23 of Act No. 302/2004 permitted the Romanian authorities to refuse extradition on serious grounds and authorized them to continue the criminal proceedings before the domestic courts. In the present case, the national courts examined the first applicant's request to be tried in Romanian territory and refused to do so by reasoned decisions. More specifically, the High Court ruled that the continuation of the criminal proceedings in Romania was not justified since the facts had been committed in the Republic of Moldova, where the authorities could more easily examine the evidence and hear the numerous injured parties. *[paras. 59 and 60]*
Eshonkulov v. Russia No.: 68900/13 Type: Judgment Date: 15 January 2015 Articles: Y: 3, 5§1(f), 5§4, 6§2 Keywords: – assurances – expulsion – extradition (grounds for refusal) – ill-treatment – presumption of	*Circumstances:* Expulsion of a failed asylum seeker from Russia to Uzbekistan. The person was originally arrested with view to extradition; his extradition was granted but he was released from extradition custody on account of reaching the maximum duration; following his release, he was rearrested for the purposes of expulsion proceedings. Interim measure complied with. *Relevant complaints:* 1. If returned to Uzbekistan, the applicant would run a real risk of being subjected to torture and ill-treatment in breach of Article 3 of the Convention for being accused of participation in a banned religious activity. 2. There existed administrative practice of substituting expulsion for extradition which was based on an unpublished order of the Moscow Region prosecutor, No. 86/81 of 3 July 2009, which provided that in every case of release of a detained individual because his extradition was impossible, it was mandatory to decide on his administrative expulsion from Russia. The applicant therefore maintained that his expulsion had been ordered to secure his rendition to the Uzbekistani authorities, that is to prevent him from being released and to secure either expulsion or extradition, as the case might be.

innocence – relation between extradition and deportation or expulsion Links: English only Translations: not available	3. The wording of the extradition decision violated the applicant's right to be presumed innocent. *Court's conclusions:* 1. Despite the applicant advancing a substantiated claim of the risk of ill-treatment at the hands of the Uzbek law enforcement authorities, the Prosecutor General's Office authorised his extradition to Uzbekistan without examining any of the risks to him. The Prosecutor General's unqualified reliance on the assurances provided by the Uzbek authorities was at variance with the Court's established position that in themselves these assurances are not sufficient and that the national authorities need to treat with caution the assurances against torture given by a State where torture is endemic or persistent. Accordingly, the Court is unable to conclude that the applicant's claims concerning his probable ill-treatment at the hands of the Uzbek authorities were duly considered by the prosecution authorities. *[para. 39]* 2. Having regard to further evidence which the applicant's submitted in support of his claim of an administrative practice of substituting expulsion for extradition, such as the unpublished order of the Moscow Region prosecutor, No. 86/81 of 3 July 2009, the existence and content of which the Government did not dispute, the Court considers it plausible that the new ground for detention (the expulsion decision) was cited primarily to circumvent the requirements of the domestic law which set a maximum time-limit for the extradition detention. The Court reiterates in this respect "detention under Article 5§1(f) must be carried out in good faith" and "must be closely connected to the ground of detention relied on by the Government". It appears that those two conditions have not been met in the present case, at least during the period when the applicant's extradition proceedings were still pending, and probably even after they were over. *[para. 65]* 3. The decision to extradite him did not in itself offend the presumption of innocence but the statement that he had "committed crimes ... in the territory of the Russian Federation" was represented as an established fact rather as a mere "state of suspicion" against him. The wording of the extradition decision thus amounted to a declaration of the applicant's guilt which prejudged the assessment of the facts by the Uzbekistani courts. *[para. 75; NOTE: See also the summary of the similar case of Ismoilov and Others v. Russia.]*
M. T. v. Sweden No.: 1412/12 Type: Judgment Date: 26 February 2015 Articles: N: 3	*Circumstances:* Expulsion of a failed asylum seeker from Sweden to Kyrgyzstan. The person suffered from chronic kidney failure and was in need of dialysis three times per week. Interim measure complied with. *Relevant complaint:* If the applicant were expelled to Kyrgyzstan, he would not receive adequate medical treatment for his illness there and thus would die within a few weeks. *Court's conclusions:* It is clear that blood dialysis treatment is available in Kyrgyzstan. Free dialysis is

Keywords: – expulsion – ill-treatment Links: English only Translations: Czech, Swedish	available at public hospitals in Kyrgyzstan and that there are also private centres where patients can receive dialysis, albeit at a certain cost. The Court further takes note of the Government's submission that no enforcement of the expulsion order will occur unless the authority responsible for the enforcement of the expulsion deems that the medical condition of the applicant so permits and that, in executing the expulsion, the authority will also ensure that appropriate measures are taken with regard to the applicant's particular needs. Moreover, it attaches significant weight to the Government's statement that the Migration Board will encourage and assist the applicant in making the necessary preparations in order to ensure that his dialysis treatment is not interrupted and he has access to the medical care he needs upon return to his home country. While the Court would stress that it is the applicant's responsibility to cooperate with the authorities and primarily for him to take the necessary steps to ensure the continuation of his treatment in his home country, it considers that in the very special circumstances of the present case, where the applicant would die within a few weeks if the dialysis treatment were interrupted, the domestic authorities' readiness to assist the applicant and take other measures to ensure that the removal can be executed without jeopardising his life upon return is particularly relevant to the Court's overall assessment. *[paras. 51 and 56]*
Khalikov v. Russia No.: 66373/13 Type: Judgment Date: 26 February 2015 Articles: Y: 3, 5§1(f), 5§4 Keywords: – expulsion – ill-treatment – relation between extradition and deportation or expulsion Links: English only Translations: not available	*See the summary of the similar case of Ismailov v. Russia.*
Tatar v. Switzerland	*Circumstances:* Expulsion of a person, suffering from schizophrenic disease syndrome, from Switzerland to

No.: 65692/12 Type: Judgment Date: 14 April 2015 Articles: N: 3 Keywords: – expulsion – ill-treatment Links: English only Translations: Czech, Turkish	Turkey. Asylum status has been revoked because the person had been sentenced for a serious crime. *Relevant complaint:* The applicant claimed to be at risk of death or ill-treatment if expelled to Turkey because his mental health would deteriorate quickly and he would be at high risk of severely harming or killing himself or another person. He claimed that in Turkey, places in psychiatric facilities were scarce and treatment consisted merely of administering medication. In his town of origin, Nurhak, especially, adequate treatment was not available. With the invalidity pension he received from Switzerland he would not be able to afford treatment. Separation from his children and grandchildren who all reside in Switzerland would lead to a further deterioration of his mental health. *Court's conclusions:* The mere fact that the circumstances concerning treatment for his long-term illness in Turkey would be less favourable than those enjoyed by him in Switzerland is not decisive from the point of view of Article 3 of the Convention. *[para. 47]*
Khamrakulov v. Russia No.: 68894/13 Type: Judgment Date: 16 April 2015 Articles: Y: 3, 5§4 Keywords: – assurances – custody (judicial review) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*
Mukhitdinov v. Russia No.: 20999/14 Type: Judgment	*See the summary of the similar case of Kasymakhunov v. Russia.*

Date: 21 May 2015 Articles: Y: 3, 5§1, 5§4, 34 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	
Ouabour v. Belgium No.: 26417/10 Type: Judgment Date: 2 June 2015 Articles: Y: 3; N: 13 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment Links: French only Translations: not available	*Circumstances:* Extradition from Belgium to Morocco for the purposes of prosecution on charges of terrorism-related offences). Interim measure complied with. *Relevant complaint:* The applicant submitted that the systematic practices contrary to Article 3 of the Convention are manifest and indisputable in the field of combating terrorism in Morocco, as reflected in the reports of the international organizations and international NGOs and that this situation still prevails in Morocco, as is clear from the findings of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The applicant insists that he belongs to a particular category of persons: persons suspected of belonging to a terrorist group. He was convicted in Belgium of participating as a leading member in a terrorist group in connection with a case in which international criminal cooperation has taken place between Belgium and Morocco. *Court's conclusions:* Information available to the Court, drawn from objective, diverse and concordant sources, establishes that the situation in Morocco with regard to respect for human rights in the context of the fight against terrorism has not changed favourably and that use of practices contrary to Article 3 of the Convention against persons prosecuted and arrested in this context is a permanent problem in Morocco. The applicant has not only denounced *in abstracto* the risk of being exposed to a violation of Article 3 of the

	Convention on account of the practice of the authorities in the context of the fight against terrorism but established that he himself belonged to the category of persons covered by this type of measure. It does not appear that the Belgian authorities had carried out any diplomatic procedure with the Moroccan authorities with a view to obtaining guarantees or assurances from them that the applicant would not be subjected to inhuman and degrading treatment after his extradition. In these circumstances, the Court is far from convinced that the applicant's fears under Article 3 of the Convention are unfounded. *[paras. 75 through 78]*
Kaytan v. Turkey No.: 27422/05 Type: Judgment Date: 15 September 2015 Articles: Y: 3 Keywords: – ill-treatment – life sentence Links: English only Translations: Turkish	*Circumstances:* Life sentence served in Turkey. *Relevant complaint:* The life sentence imposed on the applicant, without the possibility of a review, constituted a violation of Article 3 of the Convention. *Court's conclusions:* The applicant has been sentenced to an "aggravated life sentence" for terrorist activities seeking to destroy the unity of the State and to remove part of the country from the State's control. Such a penalty means that he will remain in prison for the rest of his life, regardless of any consideration relevant to his dangerousness and without the possibility of release on parole even after a period of detention. Where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration. The Court therefore holds that there has been a breach of Article 3 of the Convention. *[paras. 63, 66 and 67]*
Nabid Abdullayev v. Russia No.: 8474/14 Type: Judgment Date: 15 October 2015 Articles: Y: 3, 5§4; N: 5§4 Keywords: – assurances – custody (judicial review) – extradition (custody) – extradition (grounds for refusal)	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*

– ill-treatment Links: English only Translations: not available	
Turgunov v. Russia No.: 15590/14 Type: Judgment Date: 22 October 2015 Articles: Y: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Czech	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*
Tadzhibayev v. Russia No.: 17724/14 Type: Judgment Date: 1 December 2015 Articles: Y: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*
Mironovas and Others	*This case, like the similar case of Samaras and Others v. Greece, deals with prison overcrowding and with*

v. Lithuania Nos.: 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 & 70065/13 Type: Judgment Date: 8 December 2015 Articles: Y: 3; N: 3 Keywords: – ill-treatment Links: English only Translations: not available	*resulting prison conditions (less than 3 sq. m of personal space) in light of Article 3 of the Convention.*
Kholmurodov v. Russia No.: 58923/14 Type: Judgment Date: 1 March 2016 Articles: Y: 3, 5§1, 13 Keywords: – assurances – custody (lawfulness) – expulsion – extradition (custody) – ill-treatment Links: French only Translations: Russian	*Circumstances:* Extradition of an asylum seeker from Russia to Uzbekistan for the purposes of prosecution for a number of offences connected with creation and running of a local branch of the illegal Turkestan Islamic Movement and of distributing subversive documents. Following receipt of extradition request, the person sought was convicted and sentenced in Russia and served a sentence of imprisonment and Russian authorities also ordered his expulsion. Interim measure complied with. *Relevant complaint:* The applicant raised before the national authorities his fears of being subjected to ill-treatment in the event of his return to Uzbekistan on account of alleged political and religious offenses against him but his statements in that respect, which he described as repeated and detailed, remained unanswered on the merits. He argues that the diplomatic assurances provided by Uzbekistan are not sufficient to prevent the risk of torture or ill-treatment, particularly where torture has been shown to be routine practice in the country of destination. *Court's conclusions:* The applicant is accused in Uzbekistan, inter alia, of an offense against the constitutional order, the manufacture or disclosure of material harmful to public security and order, creation and direction of extremist, separatist, fundamentalist or other prohibited organizations and participation in such organizations. In the These accusations undoubtedly have a political and religious character, placing the applicant in the group of particularly vulnerable persons facing the risk of ill-treatment in the event of return to Uzbekistan. The assurances given by the Uzbek authorities do not provide for mechanisms, either diplomatic or based on the intervention of observers, to ensure objective control of their observance. Therefore, they are not sufficient

	to ensure that the applicant would not be subjected to ill-treatment in the event being returned to Uzbekistan. *[paras. 65 and 66]* *[NOTES: The complaint and the Court's conclusions regarding failure to examine the applicant's arguments concerning a risk of ill-treatment concern only expulsion and temporary asylum proceedings and, therefore, have not been included in this summary. 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. Abdulkhakov v. Russia) and, therefore, have not been included in this summary.]*
F. G. v. Sweden No.: 43611/11 Type: Judgment [GC] Date: 23 March 2016 Articles: Y: 2, 3; N: 2, 3 Keywords: – expulsion – ill-treatment Links: English, French Translations: Azerbaijani, Czech	*Circumstances:* Expulsion of a failed asylum seeker from Sweden to Iran. *Relevant complaint:* Owing to his political past in Iran and his conversion from Islam to Christianity in Sweden, it would be in breach of Articles 2 and 3 of the Convention to expel the applicant to Iran. *Court's conclusions:* The Court is not convinced by the applicant's claim that the Swedish authorities had failed to duly take into account his ill-treatment during his twenty days' detention in September 2009 in Iran, his detailed description of the hearing before the Revolutionary Court in October 2009 or the fact that he had submitted the original summons to re-appear on 2 November 2009. Nor is there any evidence in the case to indicate that the Swedish authorities did not duly take the risk of detention at the airport into account when assessing globally the risk faced by the applicant. It cannot be concluded, either, that the proceedings before the Swedish authorities were inadequate and insufficiently supported by domestic material or by material originating from other reliable and objective sources. Moreover, and as concerns the risk assessment, there is no evidence to support the allegation that the Swedish authorities were wrong to conclude that the applicant was not a high-profile activist or political opponent. Finally, as to the applicant's allegation before the Grand Chamber that the Iranian authorities could identify him from the Chamber judgment and would be able to do so in the future from the Grand Chamber judgment, the Court points out that the applicant was granted anonymity. It follows that Articles 2 and 3 of the Convention would not be violated on account of the applicant's political past in Iran, if he were to be expelled to this country. However, despite being aware that the applicant had converted in Sweden from Islam to Christianity and that he might therefore belong to a group of persons who, depending on various factors, could be at risk of treatment in breach of Articles 2 and 3 of the Convention upon returning to Iran, the Migration Board and the Migration Court, due to the fact that the applicant had declined to invoke the conversion as an asylum ground, did not carry out a thorough examination of the applicant's conversion, the seriousness of his beliefs, the way he manifested his Christian faith in Sweden, and how he intended to manifest it in Iran if the removal order were to be executed. Moreover, in the reopening proceedings the conversion was not considered a "new circumstance" which could

	justify a re-examination of his case. The Swedish authorities have, therefore, never made an assessment of the risk that the applicant might encounter, as a result of his conversion, upon returning to Iran. Having regard to the absolute nature of Articles 2 and 3 of the Convention, though, it is hardly conceivable that the individual concerned could forego the protection afforded thereunder. It follows that, regardless of the applicant's conduct, the competent national authorities have an obligation to assess, of their own motion, all the information brought to their attention before taking a decision on his removal to Iran. *[paras. 138 through 143 and 156]*
Findikoglu v. Germany No.: 20672/15 Type: Decision Date: 7 June 2016 Articles: N: 3, 6§1 Keywords: – extradition (documents in support of) – extradition (grounds for refusal) – fair trial – ill-treatment – life sentence Links: English only Translations: not available	*Circumstances:* Extradition from Germany to the United States of America for the purposes of prosecution on charges of cybercrime-related offences (bank fraud and computer intrusion). *Relevant complaints:* 1. The applicant's extradition to the United States of America exposed him to treatment incompatible with Article 3 of the Convention as he faced a disproportionately long prison sentence (maximum prison sentence of 247.5 years) in the United States. If convicted, he would have no prospect of being released, since that could only come via a presidential pardon, which would be very unlikely. 2. Invoking Article 6 of the Convention, the applicant complained that the extradition proceedings in Germany had been unfair; in particular, that the Court of Appeal had failed to demand the document with the sentencing calculation from the U.S. Department of Justice and had therefore breached the principle of equality of arms. *Court's conclusions:* 1. The applicant has not demonstrated that the maximum penalty would be imposed by a court in the United States without due consideration of all the relevant mitigating and aggravating factors, or that a review of such a sentence would be unavailable. Furthermore, he did not allege that the maximum sentence of 247.5 years must be imposed by the competent judge if he was found guilty of all of the offences listed in the indictment. In the light of all the material placed before it, the Court is of the opinion that the existence of a risk of a prison sentence amounting to life imprisonment could not have been assumed in the present case. As a consequence, the problem of whether or not the applicant would have any chance of being released if convicted, is not relevant in the case at hand. *[paras. 37 and 40]* 2. 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. Consequently, Article 6§1 of the Convention is not applicable to the extradition proceedings in Germany. *[para. 44]*

U. N. v. Russia No.: 14348/15 Type: Judgment Date: 26 July 2016 Articles: Y: 3, 5§4 Keywords: – assurances – custody (judicial review) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*
T.P. and A.T. v. Hungary No.: 37871/14 & 73986/14 Type: Judgment Date: 4 October 2016 Articles: Y: 3 Keywords: – ill-treatment – life sentence Links: English only Translations: not available	*Circumstances:* Life sentence with no possibility of parole served in Hungary. *Relevant complaint:* Whole life sentences imposed on the applicants were *de iure* and *de facto* irreducible under Hungarian law, in breach of Article 3 of the Convention. The clemency decision of the President of the Republic had to be counter-signed by the Minister of Justice. It therefore remained a purely discretional political decision lacking foreseeability. The overall procedure was completely impenetrable as neither the President nor the Minister of Justice were obliged to give any reasons for their decision. In the case of László Magyar v. Hungary, the Court required that when creating a review mechanism a State should ensure that the decision allowing or rejecting a pardon request contain the reasons behind it, and that a convicted person can reasonably foresee the conditions under which a pardon can be granted. However, the above-mentioned procedure disregarded those requirements. The applicants could apply for release only after forty years, a term which fell foul of the Court's findings in Vinter and Others v. the United Kingdom [GC], which indicated that States should guarantee the review of life sentences after no longer than twenty five years in order to guarantee the possibility, *de iure* and *de facto*, of a release on parole, should the proper conditions be met. The possibility foreseen by the Hungarian procedure to consider a convict's release only after forty years constituted inhuman punishment, as it fully disregarded the changes in the applicants' personality and in the

	level of their dangerousness to society, or their efforts of changing and being able to be reintegrated into society. *Court's conclusions:* Both applicants have already availed themselves of the opportunity to ask for clemency but their respective requests were rejected by the President of the Republic. However, it is not those decisions to reject the applicants' pardon requests which are of concern to the Court. Indeed, no Article 3 issue arises if a life prisoner had the right under domestic law to be considered for release but this was refused, for example, on the ground that he or she continued to pose a danger to society. Once more, what is at stake before the Court is whether the legal framework in Hungary, from the very outset of the applicants' sentences, provided them with a mechanism or possibility for review of their whole life sentences. While it is true that seeking presidential clemency continues to be open to various groups of persons serving a prison term in Hungary, including the applicants, the Court has already found that this avenue did not provide *de facto* or *de iure* reducibility of a life sentence. In sum, alone the fact that the applicants can hope to have their progress towards release reviewed only after they have served forty years of their life sentences is sufficient for the Court to conclude that the new Hungarian legislation does not offer *de facto* reducibility of the applicants' whole life sentences. Such a long waiting period unduly delays the domestic authorities' review of "whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds". To the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided, and this should be safeguarded by access to judicial review. The new legislation does not oblige the President of the Republic to assess whether continued imprisonment is justified on legitimate penological grounds. What is more, the new Act failed to set a time-frame in which the President must decide on the clemency application or to oblige him or the Minister of Justice - who needs to countersign any clemency decision – to give reasons for the decision, even if it deviates from the recommendation of the Clemency Board. In view of the lengthy period the applicants are required to wait before the commencement of the mandatory clemency procedure, coupled with the lack of sufficient procedural safeguards in the second part of the review procedure as provided for by the new legislation, the Court is not persuaded that, at the present time, the applicants' life sentences can be regarded as reducible for the purposes of Article 3 of the Convention. *[paras. 46 and 48 through 50]* *[NOTE: The dissenting opinion of Judge Kūris may be of particular interest to practitioners as well.]*
Muršić v. Croatia No.: 7334/13	*This case, like the similar case of Samaras and Others v. Greece, deals with prison overcrowding and with resulting prison conditions (less than 3 sq. m of personal space) in light of Article 3 of the Convention.*

Type: Judgment [GC] Date: 20 October 2016 Articles: Y: 3; N: 3 Keywords: – ill-treatment Links: English, French Translations: not available	
Paposhvili v. Belgium No.: 41738/10 Type: Judgment [GC] Date: 13 December 2016 Articles: Y: 3, 8 Keywords: – expulsion – family life (separation of family) – ill-treatment Links: English, French Translations: not available	*Circumstances:* Expulsion of a leukaemia sufferer from Belgium to Georgia. The applicant's family members (wife, children) allowed to stay in Belgium. Interim measure complied with. *Relevant complaints:* 1. If expelled to Georgia the applicant would have faced a real risk there of inhuman and degrading treatment contrary to Article 3 of the Convention and of a premature death in breach of Article 2 of the Convention. 2. The applicant's removal to Georgia, ordered together with a ten-year ban on re-entering Belgium, would have resulted in his separation from his family, who had been granted leave to remain in Belgium and constituted his sole source of moral support. *Court's conclusions:* 1. Although the Aliens Office's medical adviser had issued several opinions regarding the applicant's state of health based on the medical certificates provided by the applicant, these were not examined either by the Aliens Office or by the Aliens Appeals Board from the perspective of Article 3 of the Convention in the course of the proceedings concerning regularisation on medical grounds. The fact that an assessment of this kind could have been carried out immediately before the removal measure was to be enforced does not address these concerns in itself, in the absence of any indication of the extent of such an assessment and its effect on the binding nature of the order to leave the country. *[paras. 200 and 202]* 2. If the Belgian authorities had ultimately concluded that Article 3 of the Convention as interpreted above did not act as a bar to the applicant's removal to Georgia, they would have been required, in order to comply with Article 8, to examine in addition whether, in the light of the applicant's specific situation at the time of removal, the family could reasonably have been expected to follow him to Georgia or, if not, whether observance of the applicant's right to respect for his family life required that he be granted leave to remain in Belgium for the time he had left to live. *[para. 225]*
Hutchinson v. the	*Circumstances:* Life sentence served in the United Kingdom.

United Kingdom No.: 57592/08 Type: Judgment [GC] Date: 17 January 2017 Articles: N: 3 Keywords: – ill-treatment – life sentence Links: English, French Translations: Romanian	*Relevant complaint:* The whole life sentence gave rise to a violation of Article 3 of the Convention as its review was based on a vague discretion vested in a Government minister. *Court's conclusions:* It is not the Court's task to prescribe whether the review of the sentence should be judicial or executive, having regard to the margin of appreciation that must be accorded to Contracting States; it is therefore for each State to determine whether the review of sentence is conducted by the executive or the judiciary. The executive nature of a review is not in itself contrary to the requirements of Article 3 of the Convention. The Court notes the Government's statement that judicial review of a refusal by the Secretary of State to release a prisoner would not be confined to formal or procedural grounds, but would also involve an examination of the merits; thus the High Court would have the power to directly order the release of the prisoner, if it considered this to be necessary in order to comply with Article 3 of the Convention. Although the Court has not been provided with any examples of judicial review of a refusal by the Secretary of State to release a life prisoner, it is nonetheless satisfied that a significant judicial safeguard is now in place. As is stated in section 30 of the 1997 Act, the Secretary of State may order release "at any time". It follows, as the Government have confirmed, that it is open to the applicant to trigger, at any time, a review of his detention by the Secretary of State. *[paras. 45, 50, 52, 53 and 69]*
K2 v. the United Kingdom No.: 42387/13 Type: Decision Date: 7 February 2017 Articles: N: 8, 14 Keywords: – discrimination – expulsion – nationality – family life (separation of family) Links: English only Translations: not available	*Circumstances:* Exclusion of a naturalized British citizen with dual British and Sudanese citizenship from the territory of the United Kingdom and stripping him of his British citizenship. *Relevant complaint:* The decisions to deprive the applicant of his British citizenship and exclude him from the United Kingdom breached his right to respect for his family and private life and amounted to an attack on his reputation in breach of Article 8 of the Convention and made it impossible for him to personally participate in the appeal proceedings against these decisions. *Court's conclusions:* It is not suggested that the decision to deprive the applicant of his citizenship was anything other than "in accordance with the law". The applicant did not contest the foreseeability or quality of the law either before the domestic courts or before this Court. The Court does not accept that an out-of-country appeal necessarily renders a decision to revoke citizenship "arbitrary" within the meaning of Article 8 of the Convention. Article 8 cannot be interpreted so as to impose a positive obligation on Contracting States to facilitate the return of every person deprived of citizenship while outside the jurisdiction in order to pursue an appeal against that decision. The applicant was able to judicially review the decision to exclude him from the United Kingdom and in those proceedings one of his main arguments was that his exclusion would prevent him from participating effectively in the appeal against deprivation of citizenship. In light of the national courts' comprehensive and thorough examination of the applicant's submissions on this factual issue, the

	Court does not consider itself in a position to call into question their findings that there did not exist any clear, objective evidence that the applicant in this case was unable to instruct lawyers while outside the jurisdiction. The procedural difficulties the applicant complains of were not a natural consequence flowing from the simultaneous decision to deprive him of his citizenship and exclude him from the United Kingdom. The reason why the applicant had to conduct his appeal from outside the United Kingdom was not the Secretary of State's decision to exclude him, but rather his decision to flee the country before he was required to surrender to his bail. The applicant was not rendered stateless by the decision to deprive him of his British citizenship, as he was entitled to – and has since obtained – a Sudanese passport. His wife and child were no longer living in the United Kingdom and could freely visit Sudan and even live there if they wished; and the applicant's own natal family could – and did – visit him "reasonably often". Although in his most recent correspondence the applicant contends that his wife and child are resident in the United Kingdom, he has not substantiated that claim. In any case, the fact remains that they are free to visit him in Sudan or even to relocate there. The applicant does not appear to have complained in the domestic proceedings about the adverse impact of the impugned measures on his reputation. Before this Court he asserts that he has been placed on a list of persons prohibited from air travel, but he has advanced no evidence to substantiate that claim. *[paras. 52, 57, 58, 60, 62 and 63]* *[NOTE: The applicant's complaint under Article 14 of the Convention that he was treated differently from British citizens considered a threat to national security who did not hold a second nationality, as they could not be deprived of their British citizenship, was rejected by the Court for failure to exhaust domestic remedies.]*
Allanazarova v. Russia No.: 46721/15 Type: Judgment Date: 14 February 2017 Articles: Y: 3, 13 Keywords: − assurances − extradition (effective remedies) − extradition (grounds for refusal)	*Circumstances:* Extradition of an asylum seeker from Russia to Turkmenistan for the purposes of prosecution for fraud. Subsequent to the extradition decision, the applicant was granted temporary asylum in Russia. Interim measure complied with. *Relevant complaint:* 1. The applicant complained that she faced a real risk of ill-treatment in the event of her extradition to Turkmenistan – once returned to her country, she would be detained in connection with the prosecution and such detention would place her in the vulnerable group of persons deprived of their liberty in Turkmenistan. 2. As regards the assurances provided by the Turkmen authorities, the applicant submitted that they do not meet the criteria laid down by the Court in its judgment in Othman (Abu Qatada) v. United Kingdom. According to the applicant, it is not possible to objectively verify compliance in practice, whether through

– ill-treatment Links: French only Translations: Romanian	diplomatic visits or by representatives of international governmental organizations or NGOs. *Court's conclusions:* 1. In view of the scale of the deficiencies found by both United Nations agencies and NGOs, the Court is not in a position to note that these developments reflect a substantial change in the risk of being subjected to torture or ill-treatment of persons held in custody for criminal charges in Turkmenistan. Furthermore, according to these observations, there is no independent and effective mechanism for receiving complaints of torture, particularly from convicted prisoners and pre-trial detainees, and to initiate impartial and thorough investigations In the light of these considerations, the Court considers that none of the factors which it took into account in its previous judgments has lost its relevance at the time of the examination of the present case. It concludes that any person detained in Turkmenistan for criminal charges runs a real risk of being subjected to treatment contrary to Article 3 of the Convention. *[paras. 75 and 76]* 2. The Court notes that the willingness of the authorities of Turkmenistan to cooperate with international monitoring mechanisms (including human rights NGOs) is extremely limited. The Turkmen authorities seem reluctant to cooperate in the field of respect for human rights also at the bilateral level: it is clear from the decision of the Moscow Court of 4 June 2015 that they refused to give any information on the fate of an individual detained in Turkmenistan despite several requests from the Russian Ministry of Foreign Affairs. The Court therefore considers that the assurances provided by the Turkmen Attorney General's Office are unreliable and therefore do not remove any real risk of ill-treatment in the event of the applicant's extradition to Turkmenistan. *[paras. 81 and 82]*
S. K. v. Russia No.: 52722/15 Type: Judgment Date: 14 February 2017 Articles: Y: 2, 3, 13, 5§1, 5§4 Keywords: – expulsion – ill-treatment Links: English only Translations: Russian	*Circumstances:* Expulsion of a failed asylum seeker from Russia to Syria. *Relevant complaint:* The applicant complained that his administrative removal from Russia to Syria would have entailed in 2015 and would still entail at present a violation of Articles 2 and 3 of the Convention on account of the intensified hostilities in Syria in 2013-15. *Court's conclusions:* The parties have not made any specific submissions nor provided any material concerning the evolution of the situation in Syria between late 2015 and the date of the Court's deliberations. It was in the first place incumbent on the respondent Government to provide evidence that the general situation in Syria was not of the kind warranting protection under Article 3 of the Convention. Therefore, the Court assessed the issue in the light of all the material placed before it and the material obtained proprio motu. The Court found that the security and humanitarian situation and the type and extent of hostilities in Syria deteriorated dramatically between the applicant's arrival in Russia in October 2011 and the removal order issued in February 2015, but also between that time and the refusal of his temporary asylum application.

	Article 3 of the Convention does not, as such, preclude Contracting States from placing reliance on the existence of the alternative of internal flight in their assessment of an individual's claim that a return to his country of origin would expose him to a real risk of being subjected to treatment proscribed by that provision. In the present case, however, the Court has not been provided with any material which would confirm that the situation in Damascus is sufficiently safe for the applicant, who alleges that he would be drafted into active military service, or that the applicant could travel from Damascus to a safe area in Syria. *[paras. 59, 60 and 62]*
Hokkeling v. The Netherlands	*See List C*
Harkins v. the United Kingdom No.: 71537/14 Type: Decision [GC] Date: 15 June 2017 Articles: N: 3, 6 Keywords: – extradition (grounds for refusal) – fair trial – ill-treatment – life sentence Links: English, French Translations: not available	*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 or life imprisonment without parole. Interim measure complied with. *Relevant complaint:* 1. Following the Court's judgment in Trabelsi v. Belgium, his extradition to the United States of America to face a mandatory sentence of life imprisonment without parole would breach Article 3 of the Convention since the sentencing and clemency regime in Florida did not satisfy the mandatory procedural requirements identified by the Grand Chamber in Vinter and Others v. the United Kingdom [GC]. He further submitted that the imposition of a mandatory sentence of life imprisonment without parole would be "grossly disproportionate". 2. The imposition of a mandatory sentence of life imprisonment would constitute a "flagrant denial of justice" contrary to Article 6 of the Convention. *Court's conclusions:* 1. Contrary to the applicant's submission, the Court considers that his present Article 3 complaint is "substantially the same" as that raised in his previous application lodged in 2007 (Harkins and Edwards v. United Kingdom). Insofar as the applicant relies on the recent domestic proceedings, the Court recalls that in respect of new complaints concerning the failure by States to execute its judgments, it has accepted that a fresh examination of the case by the domestic authorities, whether by reopening the proceedings or by initiating an entirely new set of domestic proceedings, may in certain circumstances constitute "relevant new information" capable of giving rise to a new violation. Therefore, the Court would not exclude the possibility that for the purposes of the first limb of Article 35§2(b) of the Convention a fresh consideration of a complaint by the domestic courts could also constitute "relevant new information",

	provided that the new domestic proceedings were not based on facts previously considered by the Court. In the present case, however, the new domestic proceedings were based on the Court's judgments in Vinter and Others v. the United Kingdom [GC] and Trabelsi v. Belgium, both of which were handed down following the judgment in Harkins and Edwards v. United Kingdom. Therefore, while the facts of the case had not changed, it cannot be said that the arguments raised by the applicant in the new domestic proceedings were the subject of previous examination by the Court. Nevertheless, the sole question before the High Court was whether the judgments in Vinter and Others v. the United Kingdom [GC] and Trabelsi v. Belgium had sufficiently developed the case law so as exceptionally to permit it under the domestic rules to reopen its final determination. Having answered this question in the negative, it declined to reopen the case. As such, the question of whether the recent domestic proceedings constitute "relevant new information" is inextricably linked to the question of whether the development of the Court's case law in Vinter and Others v. the United Kingdom [GC] and Trabelsi v. Belgium and Murray v. the Netherlands [GC] constitutes "relevant new information". Consequently, the real question for the Court to decide in the present case is whether the development of its case law following its judgment in Harkins and Edwards v. United Kingdom by itself constitutes "relevant new information" for the purposes of the first limb of Article 35§2(b) of the Convention. While the English text of Article 35§2(b) uses the term "relevant new information", the French text speaks of "faits nouveaux", a difference which can only be reconciled if the ordinary meaning of "relevant new information" is understood to be relevant new factual information. As the object and purpose of Article 35§2(b) is to serve the interests of legal certainty and mark out the limits of the Court's competence, it is not open to the Court to expand the notion of "relevant new information" beyond the ordinary meaning as expressed in both the English and French texts of the Convention and thus far applied in its case law. Having given that term its ordinary meaning, the Court cannot but conclude that the development in its jurisprudence does not constitute "relevant new information" for the purposes of Article 35§2(b) of the Convention. *[paras. 43, 45, 46, 48, 50, 55 and 56]* 2. "Flagrant denial of justice" is a stringent test of unfairness which goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 of the Convention if occurring within the Contracting State. What is required is a breach of the principles of a fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article. The Court has to date never found it established that an extradition would be in violation of Article 6. In assessing whether this stringent test of unfairness has been met, the Court considers that the same standard and burden of proof should apply as in Article 3 expulsion cases.

	Therefore, it is for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if he is removed from a Contracting State, he would be exposed to a real risk of being subjected to a flagrant denial of justice. Where such evidence is adduced, it is for the Government to dispel any doubts about it. In the present case the applicant relies solely on the mandatory nature of the sentence of life imprisonment without parole. However, that sentence will follow from a trial process which the applicant does not suggest would be in itself unfair. There is no evidence to suggest that the trial court would be anything other than "independent and impartial"; that the applicant would be denied legal representation; that there would be any disregard for the rights of the defence; that there would be any reliance on statements obtained as a result of torture; or that on other grounds the applicant would risk suffering a fundamental breach of fair trial principles. *[paras. 64 through 66]*

Cases proposed for consideration of inclusion when final:

Communicated cases

- López Elorza v. Spain (No. 30614/15) – The applicant complains under Article 3 of the Convention about his intended extradition from Spain to the United States of America on the basis that if convicted he could face the risk to be sentenced to life imprisonment without parole.
- D. L. v. Austria (No. 34999/16) – The applicant complains under Articles 2 and 3 of the Convention that he would run risk of torture, inhuman or degrading treatment or even death if extradited to Kosovo, as the authorities there were not willing or able to afford him protection from the rival clan (on account of an alleged blood feud), and the conditions of detention fell short of Article 3 standards.
- Pirozzi v. Belgium (No. 21055/11) – See List C

Judgments not final

- A. I. v. Switzerland (No. 23378/15) – The Court found violation of Articles 2 and 3 of the Convention if the applicant were deported from Switzerland to Sudan.
- N. A. v. Switzerland (No. 50364/14) – The Court found no violation of Articles 2 and 3 of the Convention if the applicant were deported from Switzerland to Sudan.

Cases with request for referral to the Grand Chamber pending

- Güzelyurtlu and Others v. Cyprus and Turkey (No. 36925/07) – See List C

C. Summaries 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)

F. C. B. v. Italy No.: 12151/86 Type: Judgment Date: 12151/86 Articles: Y: 6§1, 6§3(c) Keywords: – fair trial – in absentia – mutual assistance Links: English, French Translations: Spanish	*Circumstances:* An Italian national sentenced in Italy in absentia when he was in custody in the Netherlands. *Relevant complaint:* The applicant did not know when his trial before the Milan Assize Court of Appeal would take place, as he was in solitary confinement while in custody in the Netherlands. *Court's conclusions:* The Milan Assize Court of Appeal had learnt from concurring sources (Mr F. C. B.'s counsel and two co-defendants) that apparently the applicant was in custody in the Netherlands. Yet it did not adjourn the trial, nor did it investigate further to see whether the applicant had indeed consented to not being present; it merely stated that it had not been provided with proof that he was unable to attend. It must also be borne in mind that the Dutch authorities had requested the co-operation of the Italian authorities, thereby informing them that the applicant was in prison in the Netherlands, but the Italian authorities did not draw the necessary inferences as regards the proceedings pending against Mr F. C. B. in Milan. That behaviour was scarcely compatible with the diligence which the Contracting States must exercise in order to ensure that the rights guaranteed by Article 6 of the Convention are enjoyed in an effective manner. *[para. 33]*
Breukhoven v. the Czech Republic No.: 44438/06 Type: Judgment Date: 21 July 2011 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (hearing witnesses) Links: English only Translations: Czech	*Circumstances:* The applicant (a Dutch national) was the owner of a night club in the Czech Republic who was prosecuted in the Czech Republic for forcing the women working there to prostitute themselves. During the initial stage of the investigation five women, all Romanian nationals who worked in the club, were questioned. The interviews were conducted in the presence of a judge as an urgent measure because the women said that they wished to return to Romania and never come back to the Czech Republic. Under the same procedure, two customers of the club were also questioned. Neither the applicant nor his lawyer were present at these interviews and the applicant did not even know about them as they were carried out before he was charged. *Relevant complaint:* The applicant had not been able to cross-examine several witnesses against him as guaranteed under Article 6§3(d) of the Convention. *Court's conclusions:* While it is understandable that the victims in the present case wanted to return home to Romania as soon as possible, the domestic courts made no effort at all to secure their presence at the trial or to interview them in their home country. The Court therefore does not consider that the domestic authorities fulfilled their obligation to take positive steps to enable the accused to examine or have examined the witnesses against him. Moreover, no measures were taken by the domestic authorities to counterbalance the handicaps under which the defence laboured. The Court concludes that the applicant's conviction for trafficking in human beings was based solely on the testimony of the witnesses who did not appear at trial and whom he had no opportunity to question at any time during the proceedings and that this procedural failure cannot be justified by the particular context of the present case. *[paras. 56 and 57]*
G. S. B. v. Switzerland	*Circumstances:* Transmission of bank information concerning a national of the United States from Switzerland to

No.: 28601/11 Type: Judgment Date: 22 December 2015 Articles: N: 8 Keywords: – mutual assistance (bank information) Links: French only Translations: Czech	the United States under administrative assistance in tax matters scheme. *Relevant complaint:* The disclosure of the applicant's banking data constituted a violation of his right to respect for his private life, guaranteed by Article 8 of the Convention, without sufficient legal basis, as that the Agreement and Protocol under which the data were transmitted were applied retroactively. *Court's conclusions:* The Court recalls that it accepted as a "generally accepted principle" that, unless expressly provided otherwise, procedural laws apply immediately to proceedings in progress. No specific exception of this nature existed in the present case. It is not disputed that administrative assistance in tax matters falls within the scope of procedural law. *[para. 77]*
Hokkeling **v. The Netherlands** No.: 30749/12 Type: Judgment Date: 14 February 2017 Articles: Y: 6§1, 6§3(c) Keywords: – extradition (temporary surrender) – fair trial – in absentia – mutual assistance (temporary transfer) Links: English only Translations: Romanian	*Circumstances:* A Dutch national sentenced in the Netherlands in absentia (only during hearing of appeal) when he was in custody in Norway. The Netherlands authorities considered requesting temporary transfer of the applicant from Norway to the Netherlands to enable his personal participation at the court hearing but were unable to do so as Article 11 of the European Convention on Mutual Assistance in Criminal Matters applies only to temporary transfers of witnesses and there was no legal title in the Netherlands to request the applicant's extradition with subsequent temporary surrender under Article 19§2 of the European Convention on Extradition. *Relevant complaint:* The applicant had been prevented from attending the appeal hearing alongside his counsel in person. The attempts made by the domestic authorities to secure his presence at the hearing could not be considered positive measures aimed at curing the procedural failing complained of because they were inherently futile – it was not possible to request his temporary transfer from Norway. The only genuine solution would have been for the Court of Appeal to adjourn the hearing in the applicant's case. *Court's conclusions:* Although the applicant's counsel was offered – and made use of – the opportunity to conduct the defence in the applicant's absence, he made requests both before and at the hearing for an adjournment in order to enable the applicant to attend in person. The Court considers that the applicant was entitled to attend the Court of Appeal's hearing on the merits of his case. The refusal of the Court of Appeal to consider measures that would have enabled the applicant to make use of his right to attend the hearing on the merits is all the more difficult to understand given that the Court of Appeal increased the applicant's sentence from four years and six months to eight years, which meant that after returning to the Netherlands the applicant had to serve time in addition to the sentence of the Regional Court which he had already completed. The Court agrees with the Government that the applicant's arrest in Norway was a direct consequence of his own behaviour. It also recognises as legitimate the interests of the victim's surviving kin and of society as a whole in seeing the criminal proceedings against the applicant brought to a timely conclusion. Even so, having regard to the prominent place which the right to a fair trial holds in a democratic society within the meaning of the Convention,

	the Court cannot find that either the applicant's presence at hearings during the first-instance proceedings and the initial stages of the appeal proceedings or the active conduct of the defence by counsel can compensate for the absence of the accused in person. *[paras. 59, 61 and 62]*

Cases proposed for consideration of inclusion when final:

Communicated cases

- Pirozzi v. Belgium (No. 21055/11) – The applicant claims that the file concerning his arrest by Belgian authorities does not contain documents regarding observation measures taken by the Belgian authorities in the context of mutual legal assistance requested by Italy with a view to locating and arresting him in Belgium, which made it impossible to review legality and "regularity" of the measures used and, consequently, of legality of his arrest and detention.

Cases with request for referral to the Grand Chamber pending

- Güzelyurtlu and Others v. Cyprus and Turkey (No. 36925/07) – The Court found violation of the procedural limb of Article 2 of the Convention by both Cyprus and Turkey by virtue of the failure of the respondent Governments, including the authorities of the "Turkish Republic of Northern Cyprus", to cooperate (be it in the form of extradition, mutual legal assistance or any other way) in investigating and prosecuting murder of two Cypriot nationals of Turkish Cypriot origin.
- van Wesenbeeck v. Belgium (No.: 67496/10 & 52936/12) – the case itself does not involve mutual assistance but deals with the legality of use of the outcome of an undercover operation and right of the accused person to access the confidential part of the file against him; therefore, it may be relevant also to mutual assistance cases where this type of action is requested.

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

Passaris v. Greece No.: 53344/07 Type: Decision Date: 24 September 2009 Articles: N: 6§1, 13 Keywords: – fair trial – transfer of sentenced	*Circumstances:* Denial of transfer of a Greek national from Romania to Greece. While serving the sentence of imprisonment in Romania, the person was prosecuted (for different offences) in Greece. The transfer was denied by Greek authorities under Article 5§4 of the Convention on the Transfer of Sentenced Persons; Greek authorities stated that he had the opportunity to file a new application after serving part of his sentence in Romania. His extradition from Romania to Greece requested by Greek authorities but the extradition was postponed. *Relevant complaint:* The applicant complained of a violation of his right of access to a court under Article 6§1 of the Convention on account of the refusal by the Greek authorities to consent to his transfer to Greece to serve the rest of the Romanian sentence in Greece, which would allow him to stand trial for the offences for which he was

persons Links: French only Translations: Greek	prosecuted in Greece. *Court's conclusions:* According to the Explanatory Report to the Convention on the Transfer of Sentenced Persons, said Convention is limited to providing the procedural framework for transfers. It does not imply any obligation on the State Parties to grant a request for transfer. For this reason, it is not necessary for the requested State to justify its refusal to authorize a requested transfer. In the present case, this is not a question of access to the judge, since the applicant's case had already been submitted to trial and the proceedings had been adjourned on account of his inability to attend because he was serving a sentence in Romania. *[pages 6 and 7]*
Plepi v. Albania and Greece Nos.: 11546/05, 33285/05 & 33288/05 Type: Decision Date: 4 May 2010 Articles: N: 8 Keywords: – family life (separation of family) – transfer of sentenced persons Links: English only Translations: Greek	*Circumstances:* Denial of transfer of three Albanian nationals (a man, his wife and the wife's sister) national from Greece to Albania on the ground that the sentences commuted by the Albanian court were inferior to those imposed by the Greek court and thus incompatible with the gravity of their offence and with the short time they had spent in Greek prisons. The couple's minor children and family lived in Albania. *Relevant complaint:* The Greek authorities' refusal to transfer the applicants to Albania with a view to serving the rest of their sentence in their country of origin, after having initially consented to the transfer, entailed a *de facto* longer period of imprisonment compared to the time which they would have had to serve had the transfer taken place. The applicants complained that both Governments had failed to take adequate steps to guarantee their rights and have the transfer proceedings completed. Under Article 8 of the Convention, they argued that the failure to transfer them was an unjustifiable interference with their right to respect for family life. *Court's conclusions:* There is no evidence that Greek law confers on the applicants any right to be transferred to Albania and the applicants did not refer to any relevant legal provisions which would indicate the existence of such a right. Nor is there any domestic court transfer order in their favour. Accordingly, it cannot be maintained that they have any substantive right under Greek law to be transferred to their country of origin. The provisions of the Bilateral Agreement and the Transfer Convention confine themselves to providing the inter-State procedural framework for the transfer of sentenced persons and do not generate any individual substantive rights *per se*. In any event, these international instruments do not contain an obligation on the signatory States to comply with a request for transfer. Even though the Bilateral Agreement contained grounds on which the transfer might be refused, it did not bind the Greek authorities to find in favour of the applicants' transfer requests. The Bilateral Agreement specifically excludes any such obligation to effect a transfer even if the conditions for such are satisfied. *[pages 8 and 9]*
Serce v. Romania No.: 35049/08 Type: Judgment Date: 30 June 2015	*See the summary of the similar case of Plepi v. Albania and Greece.*

Articles: Y: 3; N: 8 Keywords: – family life (separation of family) – transfer of sentenced persons Links: English only Translations: not available	
Mitrović v. Serbia No.: 52142/12 Type: Judgment Date: 21 March 2017 Articles: Y: 5§1 Keywords: – transfer of sentenced persons Links: English only Translations: Romanian, Serbian	*Circumstances:* The applicant was convicted and sentenced in 1994 by a court of the so called "Republic of Serbian Krajina", an internationally unrecognised self-proclaimed entity that ceased to exist after the adoption of the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium of 12 November 1995 (the "Erdut Agreement"). Shortly after the adoption of the Erdut Agreement, and upon the request of the "Beli Manastir District Prison", the applicant was transferred on 20 June 1996 to Sremska Mitrovica prison in Serbia. The reason for the transfer was listed as "security concerns". No proceedings for recognition and enforcement of a foreign prison sentence were conducted by the authorities of the Republic of Serbia. *Relevant complaint:* The applicant alleged that his detention in a Serbian prison on the basis of the judgment of a court of an internationally unrecognised entity violated Article 5 of the Convention. *Court's conclusions:* Given that the applicant was detained on the basis of a non-domestic decision which had not been recognized domestically, and in the absence of any other basis in domestic law for the detention, the requirement of lawfulness contained in Article 5§1 was not met. *[para. 43]*
Palfreeman v. Bulgaria No.: 59779/14 Type: Decision Date: 16 May 2017 Articles: N: 8 Keywords: – transfer of sentenced persons Links: English only Translations: not available	*Circumstances:* Transfer of an Australian national from Bulgaria to Australia. *Relevant complaint:* The Bulgarian authorities' refusal to allow the applicant's transfer to Australia had made it impossible for him to maintain a private and family life, given that all of his family and other close relatives live in Australia, in violation of Article 8 of the Convention. The applicant also complained under Article 13 in conjunction with Article 8 that he had not had an effective domestic remedy in relation to his complaint under Article 8 of the Convention. *Court's conclusions:* The fact that the applicant continues to enjoy certain Article 8 rights is not determinative of whether a refusal to transfer him to another State, and moreover to a State outside the Council of Europe and not a party to the Convention, comes within the scope of that provision. The Court notes that there is no evidence that Bulgarian law confers on the applicant a right to be transferred to Australia. The applicant did not refer to any relevant legal provisions which would indicate the existence of such a right; nor has any domestic court decision ordering such a transfer been submitted to the Court. Accordingly, it cannot be maintained that the applicant has

	any substantive right under Bulgarian law to be transferred to his country of origin. It is not for Article 8, however broad its scope, to fill an alleged gap in fundamental rights protection which results from the decision of the respondent State to exercise the possibility, in accordance with international law, not to provide a particular substantive right. The provisions of the Transfer Convention applicable between Bulgaria and Australia are confined to providing an inter-State procedural framework for the transfer of sentenced persons. The Transfer Convention does not generate any individual substantive right per se. Nor does it contain an obligation on the State parties to comply with a request for transfer. The Convention itself does not grant prisoners the right to choose their place of detention. Separation of the applicant prisoner from his family and being kept at a distance from them are regarded as inevitable consequences of detention following the exercise by the domestic authorities of their prerogatives in the area of criminal sanctions. Even assuming that Article 8 of the Convention could be considered applicable to an inter-state prison transfer request such as that at issue in the instant case, the Court notes that the refusal of the Bulgarian authorities to accede to the Australian authorities' transfer request was reasoned and the procedure showed no signs of arbitrariness. In addition, as indicated in the Bulgarian Government's submissions and as follows from the provisions of the Transfer Convention, it is open to the Australian State, on the basis of a request to that effect by the applicant, to reintroduce a new request in future, explaining why the Bulgarian State should exercise its discretion, in accordance with that Convention, to transfer the applicant to Australia to serve the remainder of his sentence. Finally, it appears from the information before the Court, that the applicant was able to maintain some family and social ties and that the authorities accommodated visits from overseas by flexibly applying the prison visiting schedule. It follows, that the applicant's complaint under Article 8 is incompatible ratione materiae with the provisions of the Convention and the applicant has no arguable claim for the purpose of Article 13 of the Convention. *[paras. 31, 32, 34 through 36, 38 and 39]*

<u>Cases proposed for consideration of inclusion when final:</u>

Communicated cases

- Makuchyan and Minasyan v. Hungary and Azerbaijan (No. 17247/13) – The applicants complain (inter alia) that Hungary violated its positive obligations under Article 2 of the Convention by granting and executing the transfer request concerning R.S. without obtaining adequate binding assurances to the effect that he would be required to complete his prison sentence in Azerbaijan and that Azerbaijan violated its procedural obligation under Article 2 by granting a presidential pardon to R.S. on his return to Azerbaijan which had the effect of preventing the full enforcement of his sentence.

- Zhernin v. Poland (No. 2669/13) – The applicant complains, without relying on any Article of the Convention, about the Polish authorities' refusal to transfer him to Ukraine. He submits that serving his sentence in Ukraine would allow him to have better and more frequent contacts with his family. Moreover the decisions of the Minister were taken without his participation and did not contain any reasoning.

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

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