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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

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

Prepared by
Mr Stéphane DUPRAZ, Ms Barbara GOETH-FLEMMICH, Mr Miroslav KUBÍČEK,
Mr Eugenio SELVAGGI, Ms Malgorzata SKOCZELAS and Mr Erik VERBERT
Updated by
Mr Miroslav KUBÍČEK

NOTE: The following index and summaries of cases have been prepared by PC-OC experts and do not bind the Court or the Council of Europe.

Contents

IMPORTANT NOTES:

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

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

A. Index of keywords with relevant case law:

Keyword	*Case Title*	*Application No.*
absentia – see *in absentia*		
Additional Protocol, Article 2 – see *transfer of sentenced persons (Additional Protocol, Article 2)*		
Additional Protocol, Article 3 – see *transfer of sentenced persons (Additional Protocol, Article 3)*		
admissibility of evidence – see *mutual assistance (admissibility of evidence)*		
assurances[2]	Abdulazhon Isakov v. Russia	14049/08
	Abdulkhakov v. Russia	14743/11
	Akram Karimov v. Russia	62892/12
	Allanazarova v. Russia	46721/15
	Al-Moayad v. Germany	35865/03
	Azimov v. Russia	67474/11
	Babar Ahmad and others v. United Kingdom (Decision)	24027/07, 11949/08 & 36742/08
	Babar Ahmad and Others v. United Kingdom (Judgment)	24027/07, 11949/08, 36742/08, 66911/09 & 67354/09
	Bakoyev v. Russia	30225/11
	Baysakov and others v. Ukraine	54131/08
	Ben Khemais v. Italy	246/07
	Beverly McCallum v. Italy [GC]	20863/21
	Bivolaru and Moldovan v. France	40324/16 & 12623/17
	B.U. and Others v. Russia	59609/17, 74677/17 & 76379/17
	Čalovskis v. Latvia	22205/13

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

	Carvajal Barrios v. Spain	13869/22
	Chahal v. United Kingdom [GC]	22414/93
	Chankayev v. Azerbaijan	56688/12
	Chentiev and Ibragimov v. Slovakia	21022/08 & 51946/08
	Cipriani v. Italy	22142/07
	De Sousa v. Portugal	28/17
	Dzhaksybergenov (aka Jaxybergenov) v. Ukraine	12343/10
	Einhorn v. France	71555/01
	Ermakov v. Russia	43165/10
	Gaforov v. Russia	25404/09
	Gasayev v. Spain	48514/06
	Gayratbek Saliyev v. Russia	39093/13
	G.S. v. Bulgaria	36538/17
	Harkins and Edwards v. United Kingdom	9146/07 & 32650/07
	Ibragimov v. Slovakia	65916/10
	K. v. Russia	69235/11
	Kadirzhanov and Mamashev v. Russia	42351/13 & 47823/13
	Kasymakhunov v. Russia	29604/12
	Khachaturov v. Armenia	59687/17
	Khamrakulov v. Russia	68894/13
	Khaydarov v. Russia	21055/09
	Khodzhayev v. Russia	52466/08
	Kholmurodov v. Russia	58923/14
	King v. United Kingdom	9742/07
	Kislov v. Russia	3598/10
	Klein v. Russia	24268/08
	Kolesnik v. Russia	26876/08
	Kozhayev v. Russia	60045/10
	Labsi v. Slovakia	33809/08
	Latipov v. Russia	77658/11

	Liu v. Poland	37610/18
	López Elorza v. Spain	30614/15
	Makhmudzhan Ergashev v. Russia	49747/11
	Makuchyan and Minasyan v. Azerbaijan and Hungary	17247/13
	Mamadaliyev v. Russia	5614/13
	Mamatkulov and Askarov v. Turkey [GC]	46827/99 & 46951/99
	Mamazhonov v. Russia	17239/13
	M. G. v. Bulgaria	59297/12
	M.I. v. Bosnia and Herzegovina	47679/17
	Muhammed Asif Hafeez v. the United Kingdom	14198/20
	Mukhitdinov v. Russia	20999/14
	Nabid Abdullayev v. Russia	8474/14
	Nivette v. France	44190/98
	Nizomkhon Dzhurayev v. Russia	31890/11
	O. v. Italy	37257/06
	Oleacha Cahuas v. Spain	24668/03
	Oshlakov v. Russia	56662/09
	Othman (Abu Qatada) v. United Kingdom	8139/09
	Ouabour v. Belgium	26417/10
	Romeo Castaño v. Belgium	8351/17
	Rrapo v. Albania	58555/10
	Rustamov v. Russia	11209/10
	Ryabikin v. Russia	8320/04
	Saadi v. Italy [GC]	37201/06
	Said Abdul Salam Mubarak v. Denmark	74411/16
	Salem v. Portugal	26844/04
	Sanchez-Sanchez v. the United Kingdom [GC]	22854/20
	Sellem v. Italy	12584/08

	Shakurov v. Russia	55822/10
	Shamayev and others v. Georgia and Russia	36378/02
	Sidikovy v. Russia	73455/11
	Soering v. United Kingdom	14038/88
	Soldatenko v. Ukraine	2440/07
	Tadzhibayev v. Russia	17724/14
	Toumi v. Italy	25716/09
	Trabelsi v. Italy	50163/08
	Trabelsi v. Belgium	140/10
	Turgunov v. Russia	15590/14
	Umirov v. Russia	17455/11
	U. N. v. Russia	14348/15
	Yefimova v.Russia	39786/09
	Zarmayev v. Belgium	35/10
	Zokhidov v. Russia	67286/10
asylum	Abdolkhani and Karimnia v. Turkey (No. 1)	30471/08
	Abdulkhakov v. Russia	14743/11
	A. H. Khan v. United Kingdom	6222/10
	Al Hanchi v. Bosnia and Herzegovina	48205/09
	Azimov v. Russia	67474/11
	Bajsultanov v. Austria	54131/10
	Baz v. Ukraine	40962/13
	Bivolaru and Moldovan v. France	40324/16 & 12623/17
	Charahili v. Turkey	46605/07
	Collins and Akaziebie v. Sweden	23944/05
	Čonka v. Belgium	51564/99
	Cruz Varas v. Sweden	15576/89
	Dubovik v. Ukraine	33210/07 & 41866/08
	Eminbeyli v. Russia	42443/02
	Ermakov v. Russia	43165/10
	F. N. and Others v. Sweden	28774/09

	Gaforov v. Russia	25404/09
	Ibragimov v. Slovakia	65916/10
	Iskandarov v. Russia	17185/05
	Ismoilov and others v. Russia	2947/06
	Jabari v. Turkey	40035/98
	J. H. v. United Kingdom	48839/09
	K. v. Russia	69235/11
	Kaboulov v. Ukraine	41015/04
	Keshmiri v. Turkey	36370/08
	Khamroev and Others v. Ukraine	41651/10
	Khaydarov v. Russia	21055/09
	Khodzhamberdiyev v. Russia	64809/10
	Khodzhayev v. Russia	52466/08
	Kolesnik v. Russia	26876/08
	Komissarov v. the Czech Republic	20611/17
	Labsi v. Slovakia	33809/08
	Mamatkulov and Askarov v. Turkey [GC]	46827/99 & 46951/99
	M. G. v. Bulgaria	59297/12
	Mokallal v. Ukraine	19246/10
	Molotchko v. Ukraine	12275/10
	N. v. Finland	38885/02
	Othman (Abu Qatada) v. United Kingdom	8139/09
	Peñafiel Salgado v. Spain	65964/01
	Rustamov v. Russia	11209/10
	Ryabikin v. Russia	8320/04
	Shakurov v. Russia	55822/10
	S. H. H. v. United Kingdom	60367/10
	Shiksaitov v. Slovakia	56751/16 & 33762/17
	Sidikovy v. Russia	73455/11
	Soliyev v. Russia	62400/10
	Sufi and Elmi v. United Kingdom	8319/07 & 11449/07

	Sultani v. France	45223/05
	Tehrani v. Turkey	32940/08 & 41626/08 & 43616/08
	T. I. v. United Kingdom	43844/98
	Turdikhojaev v. Ukraine	72510/12
	Umirov v. Russia	17455/11
	Vilvarajah and others v. United Kingdom	13163/87 & 13164/87 & 13165/87 & 13447/87 & 13448/87
	Y. P. and L. P. v. France	32476/06
	X. v. Austria and Yugoslavia	2143/64
	Zokhidov v. Russia	67286/10
conversion of sentence – see *transfer of sentenced persons (conversion of sentence)*		
covert investigations	van Wesenbeeck v. Belgium	67496/10 & 52936/12
cruel treatment – see *ill-treatment*		
custody (judicial review)	Abdolkhani and Karimnia v. Turkey (No. 1)	30471/08
	Abdulazhon Isakov v. Russia	14049/08
	Abdulkhakov v. Russia	14743/11
	Azimov v. Russia	67474/11
	Čalovskis v. Latvia	22205/13
	Chahal v. United Kingdom [GC]	22414/93
	Čonka v. Belgium	51564/99
	Dubovik v. Ukraine	33210/07 & 41866/08
	Elmuratov v. Russia	66317/09
	Eminbeyli v. Russia	42443/02
	Ermakov v. Russia	43165/10
	Gaforov v. Russia	25404/09
	Garabayev v. Russia	38411/02
	Gayratbek Saliyev v. Russia	39093/13
	Ismoilov and others v. Russia	2947/06
	K. v. Russia	69235/11
	Kaboulov v. Ukraine	41015/04
	Kadirzhanov and Mamashev v. Russia	42351/13 & 47823/13

	Ketchum v. Romania	15594/11
	Khamrakulov v. Russia	68894/13
	Khaydarov v. Russia	21055/09
	Khodzhayev v. Russia	52466/08
	Khudyakova v. Russia	13476/04
	Kislov v. Russia	3598/10
	Kolesnik v. Russia	26876/08
	Kolompar v. Belgium	11613/85
	Lynas v. Switzerland	7317/75
	Molotchko v. Ukraine	12275/10
	M. S. v. Belgium	50012/08
	Mukhitdinov v. Russia	20999/14
	Nabid Abdullayev v. Russia	8474/14
	Nasrulloyev v. Russia	656/06
	Nizomkhon Dzhurayev v. Russia	31890/11
	Öcalan v. Turkey [GC]	46221/99
	Oshlakov v. Russia	56662/09
	Rustamov v. Russia	11209/10
	Ryabikin v. Russia	8320/04
	Sanchez-Reisse v. Switzerland	9862/82
	Shamayev and others v. Georgia and Russia	36378/02
	Shchebet v. Russia	16074/07
	Shcherbina v. Russia	41970/11
	Sidikovy v. Russia	73455/11
	Soldatenko v. Ukraine	2440/07
	Stephens v. Malta	11956/07
	Tehrani v. Turkey	32940/08 & 41626/08 & 43616/08
	U. N. v. Russia	14348/15
	Yefimova v.Russia	39786/09
	Zokhidov v. Russia	67286/10
custody (lawfulness)	Abdolkhani and Karimnia v. Turkey (No. 1)	30471/08

	Abdulazhon Isakov v. Russia	14049/08
	Abdulkhakov v. Russia	14743/11
	Adamov v. Switzerland	3052/06
	Al Husin v. Bosnia and Herzegovina	3727/08
	Al-Moayad v. Germany	35865/03
	Azimov v. Russia	67474/11
	B.A.A. v. Romania	70621/16
	Bakoyev v. Russia	30225/11
	Baz v. Ukraine	40962/13
	Bozano v. Switzerland	9009/80
	Čalovskis v. Latvia	22205/13
	Chahal v. United Kingdom [GC]	22414/93
	Čonka v. Belgium	51564/99
	De Sousa v. Portugal	28/17
	Dubovik v. Ukraine	33210/07 & 41866/08
	Elmuratov v. Russia	66317/09
	Eminbeyli v. Russia	42443/02
	Gaforov v. Russia	25404/09
	Garabayev v. Russia	38411/02
	Garkavyy v. Ukraine	25978/07
	Gilanov v. the Republic of Moldova	44719/10
	Iskandarov v. Russia	17185/05
	Ismoilov and others v. Russia	2947/06
	K. v. Belgium	10819/84
	K v. Italy and Federal Republic of Germany	5078/71
	K. v. Russia	69235/11
	Kaboulov v. Ukraine	41015/04
	Kafkaris v. Cyprus [GC]	21906/04
	Kalinichenko v. Russia	40834/11
	Karpenko v. Ukraine	23361/15
	Ketchum v. Romania	15594/11

	Khamroev and Others v. Ukraine	41651/10
	Khaydarov v. Russia	21055/09
	Khodzhamberdiyev v. Russia	64809/10
	Khodzhayev v. Russia	52466/08
	Kholmurodov v. Russia	58923/14
	Khudyakova v. Russia	13476/04
	Kislov v. Russia	3598/10
	Kolesnik v. Russia	26876/08
	Kolompar v. Belgium	11613/85
	Komissarov v. the Czech Republic	20611/17
	Kozhayev v. Russia	60045/10
	Latipov v. Russia	77658/11
	Lynas v. Switzerland	7317/75
	Mokallal v. Ukraine	19246/10
	Molotchko v. Ukraine	12275/10
	M. S. v. Belgium	50012/08
	Mukhitdinov v. Russia	20999/14
	Nasrulloyev v. Russia	656/06
	Öcalan v. Turkey [GC]	46221/99
	Oleacha Cahuas v. Spain	24668/03
	Oshlakov v. Russia	56662/09
	Ozdil and Others v. the Republic of Moldova	42305/18
	Pirozzi v. Belgium	21055/11
	Ramirez Sanchez v. France	28780/95
	Rantsev v. Cyprus and Russia	25965/04
	Rustamov v. Russia	11209/10
	Ryabikin v. Russia	8320/04
	Shakurov v. Russia	55822/10
	Shamayev and others v. Georgia and Russia	36378/02
	Shchebet v. Russia	16074/07
	Shcherbina v. Russia	41970/11

	Shiksaitov v. Slovakia	56751/16 & 33762/17
	Sidikovy v. Russia	73455/11
	Soldatenko v. Ukraine	2440/07
	Soliyev v. Russia	62400/10
	Stephens v. Malta	11956/07
	Tehrani v. Turkey	32940/08 & 41626/08 & 43616/08
	Turdikhojaev v. Ukraine	72510/12
	Umirov v. Russia	17455/11
	Vasiliciuc v. the Republic of Moldova	15944/11
	Yefimova v.Russia	39786/09
	Yoh-Ekale Mwanje v. Belgium	10486/10
	Zokhidov v. Russia	67286/10
custody (length)	Abdulazhon Isakov v. Russia	14049/08
	Abdulkhakov v. Russia	14743/11
	Bakoyev v. Russia	30225/11
	B.U. and Others v. Russia	59609/17, 74677/17 & 76379/17
	Chahal v. United Kingdom [GC]	22414/93
	Ermakov v. Russia	43165/10
	Gilanov v. the Republic of Moldova	44719/10
	K. v. Russia	69235/11
	Kasymakhunov v. Russia	29604/12
	Khamroev and Others v. Ukraine	41651/10
	Khodzhamberdiyev v. Russia	64809/10
	Khokhlov v. Cyprus	53114/20
	Khudyakova v. Russia	13476/04
	Kolompar v. Belgium	11613/85
	Komissarov v. the Czech Republic	20611/17
	Kozhayev v. Russia	60045/10
	Liu v. Poland	37610/18
	Lynas v. Switzerland	7317/75
	Molotchko v. Ukraine	12275/10

	Quinn v. France	18580/91
	Raf v. Spain	53652/00
	Rustamov v. Russia	11209/10
	Sardinas Albo v. Italy	56271/00
	Shakurov v. Russia	55822/10
	Soliyev v. Russia	62400/10
	S.S. and B.Z. v. Russia	35332/17 & 79223/17
	S.S. and Others v. Russia	2236/16, 64042/17, 81344/17 & 4067/18
	Stephens v. Malta	11956/07
	U.A. v. Russia	12018/16
	Umirov v. Russia	17455/11
	Zandbergs v. Latvia	71092/01
custody (right to be informed of the reasons for arrest)	Abdolkhani and Karimnia v. Turkey (No. 1)	30471/08
	Čonka v. Belgium	51564/99
	Eminbeyli v. Russia	42443/02
	K. v. Belgium	10819/84
	Kaboulov v. Ukraine	41015/04
	Khudyakova v. Russia	13476/04
	Shamayev and others v. Georgia and Russia	36378/02
	Zokhidov v. Russia	67286/10
death penalty	Babar Ahmad and others v. United Kingdom (Decision)	24027/07, 11949/08 & 36742/08
	Baysakov and others v. Ukraine	54131/08
	Chentiev and Ibragimov v. Slovakia	21022/08 & 51946/08
	Cipriani v. Italy	22142/07
	Einhorn v. France	71555/01
	Gasayev v. Spain	48514/06
	Kaboulov v. Ukraine	41015/04
	Kozhayev v. Russia	60045/10
	M.I. v. Bosnia and Herzegovina	47679/17
	Öcalan v. Turkey [GC]	46221/99

	Rrapo v. Albania	58555/10
	Salem v. Portugal	26844/04
	Shamayev and others v. Georgia and Russia	36378/02
	Soering v. United Kingdom	14038/88
discrimination	K2 v. the United Kingdom	42387/13
	Kafkaris v. Cyprus [GC]	21906/04
	Veermäe v. Finland	38704/03
	Vlas and Others v. Romania	30541/12
disguised extradition – see *relation between extradition and deportation or expulsion*		
early release – see *transfer of sentenced persons (early release)*		
expulsion[3]	A. v. Switzerland	60342/16
	Abdolkhani and Karimnia v. Turkey (No. 1)	30471/08
	A. H. Khan v. United Kingdom	6222/10
	A. I. v. Switzerland	23378/15
	A.K. and Others v. Russia	38042/18, 44546/18 & 20033/19
	Akram Karimov v. Russia	62892/12
	Al Hanchi v. Bosnia and Herzegovina	48205/09
	Al Husin v. Bosnia and Herzegovina	3727/08
	Alleleh and Others v. Norway	569/20
	Antwi and others v. Norway	26940/10
	Aoulmi v. France	50278/99
	Bajsultanov v. Austria	54131/10
	Balogun v. United Kingdom	60286/09
	Batyrkhairov v. Turkey	69929/12
	Ben Khemais v. Italy	246/07
	Boultif v. Switzerland	54273/00
	Bozano v. Switzerland	9009/80
	B.U. and Others v. Russia	59609/17, 74677/17 & 76379/17
	Chahal v. United Kingdom [GC]	22414/93

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

	Charahili v. Turkey	46605/07
	Collins and Akaziebie v. Sweden	23944/05
	Čonka v. Belgium	51564/99
	Cruz Varas v. Sweden	15576/89
	D. v. United Kingdom	30240/96
	F. G. v. Sweden [GC]	43611/11
	F. N. and Others v. Sweden	28774/09
	Fozil Nazarov v. Russia	74759/13
	Hirsi Jamaa and Others v. Italy [GC]	27765/09
	I v. Sweden	61204/09
	Ismailov v. Russia	20110/13
	Jabari v. Turkey	40035/98
	J. H. v. United Kingdom	48839/09
	J. K. and Others v. Sweden [GC]	59166/12
	K2 v. the United Kingdom	42387/13
	Kaplan and Others v. Norway	32504/11
	Keshmiri v. Turkey	36370/08
	Khalikov v. Russia	66373/13
	Kholmurodov v. Russia	58923/14
	Labsi v. Slovakia	33809/08
	M. A. v. France	9373/15
	M.A. and Others v. Bulgaria	5115/18
	Maaouia v. France [GC]	36952/98
	M.A.M. v. Switzerland	29836/20
	Mannai v. Italy	9961/10
	M.N. and Others v. Turkey	40462/16
	M. S. v. Belgium	50012/08
	M. T. v. Sweden	1412/12
	Müslim v. Turkey	53566/99
	N. v. Finland	38885/02
	N. A. v. Switzerland	50364/14

	Nasri v. France	19465/92
	N.K. v. Russia	45761/18
	O. v. Italy	37257/06
	Öcalan v. Turkey [GC]	46221/99
	O.O. v. Russia	36321/16
	Othman (Abu Qatada) v. United Kingdom	8139/09
	Ozdil and Others v. the Republic of Moldova	42305/18
	Paposhvili v. Belgium [GC]	41738/10
	Rakhimov v. Russia	50552/13
	Ramirez Sanchez v. France	28780/95
	R.K. v. Russia	30261/17
	R.R. and A.R. v. Russia	67485/17 & 24014/18
	Saadi v. Italy [GC]	37201/06
	Said Abdul Salam Mubarak v. Denmark	74411/16
	Samsonnikov v. Estonia	52178/10
	Savran v. Denmark [GC]	57467/15
	S.B. and S.Z. v. Russia	65122/17 & 13280/18
	Sellem v. Italy	12584/08
	S. F. and others v. Sweden	52077/10
	Shenturk and Others v. Azerbaijan	41326/17, 8098/18, 8147/18 & 8384/18
	S. H. H. v. United Kingdom	60367/10
	S. K. v. Russia	52722/15
	S.S. and Others v. Russia	2236/16, 64042/17, 81344/17 & 4067/18
	S.S. and B.Z. v. Russia	35332/17 & 79223/17
	Sufi and Elmi v. United Kingdom	8319/07 & 11449/07
	Sultani v. France	45223/05
	Tatar v. Switzerland	65692/12
	Tehrani v. Turkey	32940/08 & 41626/08 & 43616/08
	T. I. v. United Kingdom	43844/98
	T.K. and Others v. Lithuania	55978/20
	Toumi v. Italy	25716/09

	Trabelsi v. Italy	50163/08
	U.A. v. Russia	12018/16
	Veermäe v. Finland	38704/03
	Vilvarajah and others v. United Kingdom	13163/87 & 13164/87 & 13165/87 & 13447/87 & 13448/87
	W v. France	1348/21
	X v. the Netherlands	14319/17
	Yoh-Ekale Mwanje v. Belgium	10486/10
	Y. P. and L. P. v. France	32476/06
	Zokhidov v. Russia	67286/10
extradition (custody)	Abdulazhon Isakov v. Russia	14049/08
	Abdulkhakov v. Russia	14743/11
	Adamov v. Switzerland	3052/06
	Al-Moayad v. Germany	35865/03
	Azimov v. Russia	67474/11
	B.A.A. v. Romania	70621/16
	Bakoyev v. Russia	30225/11
	Baz v. Ukraine	40962/13
	Bordovskiy v. Russia	49491/99
	B.U. and Others v. Russia	59609/17, 74677/17 & 76379/17
	Čalovskis v. Latvia	22205/13
	De Sousa v. Portugal	28/17
	Dubovik v. Ukraine	33210/07 & 41866/08
	Elmuratov v. Russia	66317/09
	Eminbeyli v. Russia	42443/02
	Ermakov v. Russia	43165/10
	Gaforov v. Russia	25404/09
	Garabayev v. Russia	38411/02
	Garkavyy v. Ukraine	25978/07
	Gayratbek Saliyev v. Russia	39093/13
	Gilanov v. the Republic of Moldova	44719/10

	Iskandarov v. Russia	17185/05
	Ismoilov and others v. Russia	2947/06
	K. v. Belgium	10819/84
	K v. Italy and Federal Republic of Germany	5078/71
	K. v. Russia	69235/11
	Kaboulov v. Ukraine	41015/04
	Kadirzhanov and Mamashev v. Russia	42351/13 & 47823/13
	Kalinichenko v. Russia	40834/11
	Karpenko v. Ukraine	23361/15
	Kasymakhunov v. Russia	29604/12
	Ketchum v. Romania	15594/11
	Khamrakulov v. Russia	68894/13
	Khamroev and Others v. Ukraine	41651/10
	Khaydarov v. Russia	21055/09
	Khodzhamberdiyev v. Russia	64809/10
	Khodzhayev v. Russia	52466/08
	Khokhlov v. Cyprus	53114/20
	Kholmurodov v. Russia	58923/14
	Khudyakova v. Russia	13476/04
	Kislov v. Russia	3598/10
	Kolesnik v. Russia	26876/08
	Kolompar v. Belgium	11613/85
	Komissarov v. the Czech Republic	20611/17
	Kozhayev v. Russia	60045/10
	Mokallal v. Ukraine	19246/10
	Molotchko v. Ukraine	12275/10
	Nasrulloyev v. Russia	656/06
	Latipov v. Russia	77658/11
	Liu v. Poland	37610/18
	Lynas v. Switzerland	7317/75
	Mukhitdinov v. Russia	20999/14

	Nabid Abdullayev v. Russia	8474/14
	Nizomkhon Dzhurayev v. Russia	31890/11
	Öcalan v. Turkey [GC]	46221/99
	Oleacha Cahuas v. Spain	24668/03
	Oshlakov v. Russia	56662/09
	Pirozzi v. Belgium	21055/11
	Quinn v. France	18580/91
	Raf v. Spain	53652/00
	Rustamov v. Russia	11209/10
	Ryabikin v. Russia	8320/04
	Sanchez-Reisse v. Switzerland	9862/82
	Sardinas Albo v. Italy	56271/00
	Shakurov v. Russia	55822/10
	Shamayev and others v. Georgia and Russia	36378/02
	Shchebet v. Russia	16074/07
	Shcherbina v. Russia	41970/11
	Shiksaitov v. Slovakia	56751/16 & 33762/17
	Sidikovy v. Russia	73455/11
	Soldatenko v. Ukraine	2440/07
	Soliyev v. Russia	62400/10
	S.S. and B.Z. v. Russia	35332/17 & 79223/17
	S.S. and Others v. Russia	2236/16, 64042/17, 81344/17 & 4067/18
	Stephens v. Malta	11956/07
	Turdikhojaev v. Ukraine	72510/12
	Umirov v. Russia	17455/11
	U. N. v. Russia	14348/15
	Vasiliciuc v. the Republic of Moldova	15944/11
	Yefimova v.Russia	39786/09
	Zandbergs v. Latvia	71092/01
	Zokhidov v. Russia	67286/10
extradition (documents in support of)	Findikoglu v. Germany	20672/15

	Kislov v. Russia	3598/10
	Lynas v. Switzerland	7317/75
extradition (effective remedies)	Abdulazhon Isakov v. Russia	14049/08
	Allanazarova v. Russia	46721/15
	Baysakov and others v. Ukraine	54131/08
	Chankayev v. Azerbaijan	56688/12
	Elmuratov v. Russia	66317/09
	Garabayev v. Russia	38411/02
	Nasr and Ghali v. Italy	44883/09
	Shamayev and others v. Georgia and Russia	36378/02
	Tershiyev v. Azerbaijan	10226/13
	Vlas and Others v. Romania	30541/12
extradition (grounds for refusal)	Abdulazhon Isakov v. Russia	14049/08
	Abdulkhakov v. Russia	14743/11
	Ahorugeze v. Sweden	37075/09
	Allanazarova v. Russia	46721/15
	Al-Moayad v. Germany	35865/03
	Aronica v. Germany	72032/01
	Aswat v. United Kingdom	17299/12
	Azimov v. Russia	67474/11
	Babar Ahmad and others v. United Kingdom (Decision)	24027/07, 11949/08 & 36742/08
	Babar Ahmad and Others v. United Kingdom (Judgment)	24027/07, 11949/08, 36742/08, 66911/09 & 67354/09
	Bakoyev v. Russia	30225/11
	Baysakov and others v. Ukraine	54131/08
	Beverly McCallum v. Italy [GC]	20863/21
	Bivolaru and Moldovan v. France	40324/16 & 12623/17
	B.U. and Others v. Russia	59609/17, 74677/17 & 76379/17
	Čalovskis v. Latvia	22205/13
	Carvajal Barrios v. Spain	13869/22

	Chankayev v. Azerbaijan	56688/12
	Chentiev and Ibragimov v. Slovakia	21022/08 & 51946/08
	Cipriani v. Italy	22142/07
	D. L. v. Austria	34999/16
	Dzhaksybergenov (aka Jaxybergenov) v. Ukraine	12343/10
	E.G.M. v. Luxembourg	24015/94
	Einhorn v. France	71555/01
	Elmuratov v. Russia	66317/09
	Ermakov v. Russia	43165/10
	Findikoglu v. Germany	20672/15
	Gaforov v. Russia	25404/09
	Garabayev v. Russia	38411/02
	Gasayev v. Spain	48514/06
	Gayratbek Saliyev v. Russia	39093/13
	G.S. v. Bulgaria	36538/17
	Harkins v. the United Kingdom [GC]	71537/14
	Harkins and Edwards v. United Kingdom	9146/07 & 32650/07
	Ibragimov v. Slovakia	65916/10
	Iskandarov v. Russia	17185/05
	Ismoilov and others v. Russia	2947/06
	K. v. Russia	69235/11
	Kaboulov v. Ukraine	41015/04
	Kadirzhanov and Mamashev v. Russia	42351/13 & 47823/13
	Kasymakhunov v. Russia	29604/12
	Ketchum v. Romania	15594/11
	Khachaturov v. Armenia	59687/17
	Khamrakulov v. Russia	68894/13
	Khasanov and Rakhmanov v. Russia [GC]	28492/15 & 49975/15
	Khaydarov v. Russia	21055/09
	Khodzhayev v. Russia	52466/08

	King v. United Kingdom	9742/07
	Kislov v. Russia	3598/10
	Klein v. Russia	24268/08
	Kolesnik v. Russia	26876/08
	Kozhayev v. Russia	60045/10
	Latipov v. Russia	77658/11
	Liu v. Poland	37610/18
	López Elorza v. Spain	30614/15
	Makhmudzhan Ergashev v. Russia	49747/11
	Mamadaliyev v. Russia	5614/13
	Mamatkulov and Askarov v. Turkey [GC]	46827/99 & 46951/99
	Mamazhonov v. Russia	17239/13
	M. G. v. Bulgaria	59297/12
	M.I. v. Bosnia and Herzegovina	47679/17
	Muhammed Asif Hafeez v. the United Kingdom	14198/20
	Mukhitdinov v. Russia	20999/14
	Nabid Abdullayev v. Russia	8474/14
	Nivette v. France	44190/98
	Nizomkhon Dzhurayev v. Russia	31890/11
	N.M. v. Russia	29343/18
	Oleacha Cahuas v. Spain	24668/03
	Oshlakov v. Russia	56662/09
	Ouabour v. Belgium	26417/10
	Peñafiel Salgado v. Spain	65964/01
	Pirozzi v. Belgium	21055/11
	Rafaa v. France	25393/10
	R.R. and A.R. v. Russia	67485/17 & 24014/18
	Rrapo v. Albania	58555/10
	Rushing v. The Netherlands	3325/10
	Rustamov v. Russia	11209/10

	Ryabikin v. Russia	8320/04
	Salem v. Portugal	26844/04
	Sanchez-Sanchez v. the United Kingdom [GC]	22854/20
	Shakurov v. Russia	55822/10
	Shamayev and others v. Georgia and Russia	36378/02
	Sidikovy v. Russia	73455/11
	Soering v. United Kingdom	14038/88
	Soldatenko v. Ukraine	2440/07
	S.B. and S.Z. v. Russia	65122/17 & 13280/18
	S.S. and B.Z. v. Russia	35332/17 & 79223/17
	S.S. and Others v. Russia	2236/16, 64042/17, 81344/17 & 4067/18
	Tadzhibayev v. Russia	17724/14
	Tershiyev v. Azerbaijan	10226/13
	Trabelsi v. Belgium	140/10
	Turgunov v. Russia	15590/14
	Umirov v. Russia	17455/11
	U. N. v. Russia	14348/15
	Vlas and Others v. Romania	30541/12
	X. v. Austria and Yugoslavia	2143/64
	Yefimova v.Russia	39786/09
	Zarmayev v. Belgium	35/10
	Zokhidov v. Russia	67286/10
extradition (postponement)	Raf v. Spain	53652/00
	Sardinas Albo v. Italy	56271/00
extradition (procedure)	Atmaca v. Germany	45293/06
	B.A.A. v. Romania	70621/16
	Čalovskis v. Latvia	22205/13
	De Sousa v. Portugal	28/17
	E.G.M. v. Luxembourg	24015/94

	Güzelyurtlu and Others v. Cyprus and Turkey [GC]	36925/07
	H. v. Spain	10227/82
	Khachaturov v. Armenia	59687/17
	Looker v. Spain	51568/19
	Romeo Castaño v. Belgium	8351/17
	Turdikhojaev v. Ukraine	72510/12
	Vlas and Others v. Romania	30541/12
extradition (rule of speciality)	Salem v. Portugal	26844/04
	Woolley v. United Kingdom	28019/10
	Zandbergs v. Latvia	71092/01
extradition (temporary surrender)	Chankayev v. Azerbaijan	56688/12
	Hokkeling v. The Netherlands	30749/12
	Paci v. Belgium	45597/09
	Tershiyev v. Azerbaijan	10226/13
extraordinary rendition	Nasr and Ghali v. Italy	44883/09
	Stocké v. Germany	28/1989/188/248
fair trial	Al Alo v. Slovakia	32084/19
	Al Husin v. Bosnia and Herzegovina	3727/08
	Al-Moayad v. Germany	35865/03
	A. M. v. Italy	37019/97
	Aronica v. Germany	72032/01
	B.A.A. v. Romania	70621/16
	Babar Ahmad and others v. United Kingdom (Decision)	24027/07, 11949/08 & 36742/08
	Bátěk and Others v. the Czech Republic	54146/09
	Breukhoven v. the Czech Republic	44438/06
	Csoszánszki v. Sweden	22318/02
	Damir Sibgatullin v. Russia	1413/05
	De Legé v. the Netherlands	58342/15
	Dijkhuizen v. the Netherlands	61591/16

	Drozd and Janousek v. France and Spain	12747/87
	Dzhaksybergenov (aka Jaxybergenov) v. Ukraine	12343/10
	E.G.M. v. Luxembourg	24015/94
	Einhorn v. France	71555/01
	El Haski v. Belgium	649/08
	Fąfrowicz v. Poland	43609/07
	F. C. B. v. Italy	12151/86
	Findikoglu v. Germany	20672/15
	Gaforov v. Russia	25404/09
	H. v. Spain	10227/82
	Harkins v. the United Kingdom [GC]	71537/14
	Hokkeling v. The Netherlands	30749/12
	Ibragimov v. Slovakia	65916/10
	Janyr v. the Czech Republic	42937/08
	Kartsivadze v. Georgia	30680/09
	Ketchum v. Romania	15594/11
	King v. United Kingdom	9742/07
	Kislov v. Russia	3598/10
	Kolesnik v. Russia	26876/08
	Kostecki v. Poland	14932/09
	Lynas v. Switzerland	7317/75
	Maaouia v. France [GC]	36952/98
	Mamatkulov and Askarov v. Turkey [GC]	46827/99 & 46951/99
	Marcello Viola v. Italy	45106/04
	Muhammed Asif Hafeez v. the United Kingdom	14198/20
	Öcalan v. Turkey [GC]	46221/99
	Oleacha Cahuas v. Spain	24668/03
	Othman (Abu Qatada) v. United Kingdom	8139/09
	Passaris v. Greece	53344/07

	Peñafiel Salgado v. Spain	65964/01
	Salem v. Portugal	26844/04
	Schatschaschwili v. Germany [GC]	9154/10
	Shorazova v. Malta	51853/19
	Sidikovy v. Russia	73455/11
	Sigurður Einarsson and Others v. Iceland	39757/15
	Smith v. Germany	27801/05
	Solakov v. FYROM	47023/99
	Somogyi v. Italy	67972/01
	Stojkovic v. France and Belgium	25303/08
	Tseber v. Czech Republic	46203/08
	Van Ingen v. Belgium	9987/03
	van Wesenbeeck v. Belgium	67496/10 & 52936/12
	Veermäe v. Finland	38704/03
	Vlas and Others v. Romania	30541/12
	Willcox and Hurford v. United Kingdom	43759/10 & 43771/12
	Yefimova v.Russia	39786/09
	Yeğer v. Turkey	4099/12
	Zarmayev v. Belgium	35/10
	Zhernin v. Poland	2669/13
	Zhukovskiy v. Ukraine	31240/03
family life (separation of family)	A. H. Khan v. United Kingdom	6222/10
	Alleleh and Others v. Norway	569/20
	Antwi and others v. Norway	26940/10
	Aoulmi v. France	50278/99
	Aronica v. Germany	72032/01
	Bajsultanov v. Austria	54131/10
	Balogun v. United Kingdom	60286/09
	Boultif v. Switzerland	54273/00
	Cruz Varas v. Sweden	15576/89
	K2 v. the United Kingdom	42387/13

	Kaplan and Others v. Norway	32504/11
	Ketchum v. Romania	15594/11
	King v. United Kingdom	9742/07
	Labsi v. Slovakia	33809/08
	N. v. Finland	38885/02
	Nasri v. France	19465/92
	Paposhvili v. Belgium [GC]	41738/10
	Peñafiel Salgado v. Spain	65964/01
	Plepi v. Albania and Greece	11546/05, 33285/05 & 33288/05
	Said Abdul Salam Mubarak v. Denmark	74411/16
	Samsonnikov v. Estonia	52178/10
	Serce v. Romania	35049/08
	Shakurov v. Russia	55822/10
	Vlas and Others v. Romania	30541/12
	Zhernin v. Poland	2669/13
freezing of assets – see *mutual assistance (seizure of assets)*		
hearing witnesses – see *mutual assistance (hearing witnesses)*		
ill-treatment[4]	A. v. Switzerland	60342/16
	Abdolkhani and Karimnia v. Turkey (No. 1)	30471/08
	Abdulazhon Isakov v. Russia	14049/08
	Abdulkhakov v. Russia	14743/11
	Ahorugeze v. Sweden	37075/09
	A. I. v. Switzerland	23378/15
	A.K. and Others v. Russia	38042/18, 44546/18 & 20033/19
	Akram Karimov v. Russia	62892/12
	Al Hanchi v. Bosnia and Herzegovina	48205/09
	Al Husin v. Bosnia and Herzegovina	3727/08
	Allanazarova v. Russia	46721/15
	Al-Moayad v. Germany	35865/03

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

	Ananyev and others v. Russia	42525/07 & 60800/08
	Aoulmi v. France	50278/99
	Aronica v. Germany	72032/01
	Aswat v. United Kingdom	17299/12
	Azimov v. Russia	67474/11
	Babar Ahmad and others v. United Kingdom (Decision)	24027/07, 11949/08 & 36742/08
	Babar Ahmad and Others v. United Kingdom (Judgment)	24027/07, 11949/08, 36742/08, 66911/09 & 67354/09
	Bajsultanov v. Austria	54131/10
	Bakoyev v. Russia	30225/11
	Balogun v. United Kingdom	60286/09
	Bancsók and László Magyar (no.2) v. Hungary	52374/15 & 53364/15
	Batyrkhairov v. Turkey	69929/12
	Baysakov and others v. Ukraine	54131/08
	Ben Khemais v. Italy	246/07
	Beverly McCallum v. Italy [GC]	20863/21
	Bivolaru and Moldovan v. France	40324/16 & 12623/17
	Bodein v. France	40014/10
	B.U. and Others v. Russia	59609/17, 74677/17 & 76379/17
	Čalovskis v. Latvia	22205/13
	Carvajal Barrios v. Spain	13869/22
	Chahal v. United Kingdom [GC]	22414/93
	Chankayev v. Azerbaijan	56688/12
	Charahili v. Turkey	46605/07
	Chentiev and Ibragimov v. Slovakia	21022/08 & 51946/08
	Cipriani v. Italy	22142/07
	Collins and Akaziebie v. Sweden	23944/05
	Čonka v. Belgium	51564/99
	Cruz Varas v. Sweden	15576/89

	D. v. United Kingdom	30240/96
	D. L. v. Austria	34999/16
	Dzhaksybergenov (aka Jaxybergenov) v. Ukraine	12343/10
	E.G.M. v. Luxembourg	24015/94
	Einhorn v. France	71555/01
	Elmuratov v. Russia	66317/09
	Ermakov v. Russia	43165/10
	F. G. v. Sweden [GC]	43611/11
	Findikoglu v. Germany	20672/15
	F. N. and Others v. Sweden	28774/09
	Fozil Nazarov v. Russia	74759/13
	Gäfgen v. Germany [GC]	22978/05
	Gaforov v. Russia	25404/09
	Garabayev v. Russia	38411/02
	Gasayev v. Spain	48514/06
	Gayratbek Saliyev v. Russia	39093/13
	G.S. v. Bulgaria	36538/17
	Harakchiev and Tolumov v. Bulgaria	15018/11 & 61199/12
	Harkins v. the United Kingdom [GC]	71537/14
	Harkins and Edwards v. United Kingdom	9146/07 & 32650/07
	Hirsi Jamaa and Others v. Italy [GC]	27765/09
	Hutchinson v. the United Kingdom [GC]	57592/08
	I v. Sweden	61204/09
	Ibragimov v. Slovakia	65916/10
	Iskandarov v. Russia	17185/05
	Ismailov v. Russia	20110/13
	Ismoilov and others v. Russia	2947/06
	Jabari v. Turkey	40035/98
	J. H. v. United Kingdom	48839/09
	J. K. and Others v. Sweden [GC]	59166/12

	K. v. Russia	69235/11
	Kaboulov v. Ukraine	41015/04
	Kadirzhanov and Mamashev v. Russia	42351/13 & 47823/13
	Kasymakhunov v. Russia	29604/12
	Kaytan v. Turkey	27422/05
	Keshmiri v. Turkey	36370/08
	Khachaturov v. Armenia	59687/17
	Khalikov v. Russia	66373/13
	Khamrakulov v. Russia	68894/13
	Khasanov and Rakhmanov v. Russia [GC]	28492/15 & 49975/15
	Khaydarov v. Russia	21055/09
	Khodzhayev v. Russia	52466/08
	Kholmurodov v. Russia	58923/14
	Khudyakova v. Russia	13476/04
	King v. United Kingdom	9742/07
	Kislov v. Russia	3598/10
	Klein v. Russia	24268/08
	Kolesnik v. Russia	26876/08
	Kozhayev v. Russia	60045/10
	Kupinskyy v. Ukraine	5084/18
	Labsi v. Slovakia	33809/08
	László Magyar v. Hungary	73593/10
	Latipov v. Russia	77658/11
	Liu v. Poland	37610/18
	López Elorza v. Spain	30614/15
	Lynas v. Switzerland	7317/75
	M. A. v. France	9373/15
	M.A. and Others v. Bulgaria	5115/18
	Makhmudzhan Ergashev v. Russia	49747/11
	M.A.M. v. Switzerland	29836/20
	Mamadaliyev v. Russia	5614/13

	Mamatkulov and Askarov v. Turkey [GC]	46827/99 & 46951/99
	Mamazhonov v. Russia	17239/13
	Mannai v. Italy	9961/10
	M. G. v. Bulgaria	59297/12
	M.I. v. Bosnia and Herzegovina	47679/17
	Mironovas and Others v. Lithuania	40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 & 70065/13
	M.N. and Others v. Turkey	40462/16
	M. S. v. Belgium	50012/08
	M. T. v. Sweden	1412/12
	Muhammed Asif Hafeez v. the United Kingdom	14198/20
	Mukhitdinov v. Russia	20999/14
	Muršić v. Croatia [GC]	7334/13
	Müslim v. Turkey	53566/99
	N. v. Finland	38885/02
	N. A. v. Switzerland	50364/14
	Nabid Abdullayev v. Russia	8474/14
	Nivette v. France	44190/98
	Nizomkhon Dzhurayev v. Russia	31890/11
	N.K. v. Russia	45761/18
	N.M. v. Russia	29343/18
	O. v. Italy	37257/06
	Oleacha Cahuas v. Spain	24668/03
	O.O. v. Russia	36321/16
	Oshlakov v. Russia	56662/09
	Othman (Abu Qatada) v. United Kingdom	8139/09
	Ouabour v. Belgium	26417/10
	Paposhvili v. Belgium [GC]	41738/10
	Peñafiel Salgado v. Spain	65964/01
	Rafaa v. France	25393/10

	Rakhimov v. Russia	50552/13
	R.K. v. Russia	30261/17
	R.R. and A.R. v. Russia	67485/17 & 24014/18
	Rrapo v. Albania	58555/10
	Rushing v. The Netherlands	3325/10
	Rustamov v. Russia	11209/10
	Ryabikin v. Russia	8320/04
	Saadi v. Italy [GC]	37201/06
	Said Abdul Salam Mubarak v. Denmark	74411/16
	Salem v. Portugal	26844/04
	Samaras and others v. Greece	11463/09
	Sanchez-Sanchez v. the United Kingdom [GC]	22854/20
	Sándor Varga and Others v. Hungary	39734/15, 35530/16 & 26804/18
	Savran v. Denmark [GC]	57467/15
	S.B. and S.Z. v. Russia	65122/17 & 13280/18
	Sellem v. Italy	12584/08
	S. F. and others v. Sweden	52077/10
	Shakurov v. Russia	55822/10
	Shamayev and others v. Georgia and Russia	36378/02
	Shchebet v. Russia	16074/07
	Shenturk and Others v. Azerbaijan	41326/17, 8098/18, 8147/18 & 8384/18
	S. H. H. v. United Kingdom	60367/10
	Sidikovy v. Russia	73455/11
	S. K. v. Russia	52722/15
	Soering v. United Kingdom	14038/88
	Soldatenko v. Ukraine	2440/07
	S.S. and B.Z. v. Russia	35332/17 & 79223/17
	S.S. and Others v. Russia	2236/16, 64042/17, 81344/17 & 4067/18
	Sufi and Elmi v. United Kingdom	8319/07 & 11449/07
	Sultani v. France	45223/05
	Tadzhibayev v. Russia	17724/14

	Tatar v. Switzerland	65692/12
	Tehrani v. Turkey	32940/08 & 41626/08 & 43616/08
	Tershiyev v. Azerbaijan	10226/13
	T. I. v. United Kingdom	43844/98
	T.K. and Others v. Lithuania	55978/20
	Törköly v. Hungary	4413/06
	Toumi v. Italy	25716/09
	T.P. and A.T. v. Hungary	37871/14 & 73986/14
	Trabelsi v. Belgium	140/10
	Trabelsi v. Italy	50163/08
	Turdikhojaev v. Ukraine	72510/12
	Turgunov v. Russia	15590/14
	U.A. v. Russia	12018/16
	Umirov v. Russia	17455/11
	U. N. v. Russia	14348/15
	Veermäe v. Finland	38704/03
	Vilvarajah and others v. United Kingdom	13163/87 & 13164/87 & 13165/87 & 13447/87 & 13448/87
	Vlas and Others v. Romania	30541/12
	W v. France	1348/21
	Willcox and Hurford v. United Kingdom	43759/10 & 43771/12
	X. v. Austria and Yugoslavia	2143/64
	X v. the Netherlands	14319/17
	X and Others v. Bulgaria	22457/16
	Yefimova v.Russia	39786/09
	Yoh-Ekale Mwanje v. Belgium	10486/10
	Y. P. and L. P. v. France	32476/06
	Zarmayev v. Belgium	35/10
	Zokhidov v. Russia	67286/10
immunity of a witness – see *mutual assistance (hearing witnesses)*		
in absentia	Bozano v. Switzerland	9009/80

	De Sousa v. Portugal	28/17
	Einhorn v. France	71555/01
	F. C. B. v. Italy	12151/86
	Garkavyy v. Ukraine	25978/07
	Hokkeling v. The Netherlands	30749/12
	Klein v. Russia	24268/08
	Kislov v. Russia	3598/10
	Labsi v. Slovakia	33809/08
	Pirozzi v. Belgium	21055/11
	Somogyi v. Italy	67972/01
	Yeğer v. Turkey	4099/12
inhumane treatment – see *ill-treatment*		
interim measure	Abdulkhakov v. Russia	14743/11
	Al-Moayad v. Germany	35865/03
	Aoulmi v. France	50278/99
	Atmaca v. Germany	45293/06
	Bakoyev v. Russia	30225/11
	Ben Khemais v. Italy	246/07
	B.U. and Others v. Russia	59609/17, 74677/17 & 76379/17
	Cruz Varas v. Sweden	15576/89
	Ermakov v. Russia	43165/10
	Kasymakhunov v. Russia	29604/12
	Khodzhayev v. Russia	52466/08
	Labsi v. Slovakia	33809/08
	Latipov v. Russia	77658/11
	Liu v. Poland	37610/18
	Lynas v. Switzerland	7317/75
	M. A. v. France	9373/15
	Mamatkulov and Askarov v. Turkey [GC]	46827/99 & 46951/99
	Mamazhonov v. Russia	17239/13
	Mannai v. Italy	9961/10

	Molotchko v. Ukraine	12275/10
	Mukhitdinov v. Russia	20999/14
	Nizomkhon Dzhurayev v. Russia	31890/11
	N.K. v. Russia	45761/18
	Oleacha Cahuas v. Spain	24668/03
	O.O. v. Russia	36321/16
	Rrapo v. Albania	58555/10
	Shamayev and others v. Georgia and Russia	36378/02
	S.S. and B.Z. v. Russia	35332/17 & 79223/17
	Toumi v. Italy	25716/09
	Trabelsi v. Italy	50163/08
	Trabelsi v. Belgium	140/10
	Umirov v. Russia	17455/11
	Yoh-Ekale Mwanje v. Belgium	10486/10
	Zokhidov v. Russia	67286/10
international validity of criminal judgments – see *transfer of enforcement of sentence*		
lawfulness of custody – see *custody (lawfulness)*		
length of custody – see *custody (length)*		
life sentence[5]	Babar Ahmad and others v. United Kingdom (Decision)	24027/07, 11949/08 & 36742/08
	Babar Ahmad and Others v. United Kingdom (Judgment)	66911/09 & 67354/09
	Bancsók and László Magyar (no.2) v. Hungary	52374/15 & 53364/15
	Beverly McCallum v. Italy [GC]	20863/21
	Bodein v. France	40014/10
	Čalovskis v. Latvia	22205/13
	Carvajal Barrios v. Spain	13869/22
	Einhorn v. France	71555/01
	Findikoglu v. Germany	20672/15

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

	Harakchiev and Tolumov v. Bulgaria	15018/11 & 61199/12
	Harkins v. the United Kingdom [GC]	71537/14
	Harkins and Edwards v. United Kingdom	9146/07 & 32650/07
	Hutchinson v. the United Kingdom [GC]	57592/08
	Kafkaris v. Cyprus [GC]	21906/04
	Kaytan v. Turkey	27422/05
	Kupinskyy v. Ukraine	5084/18
	László Magyar v. Hungary	73593/10
	López Elorza v. Spain	30614/15
	Muhammed Asif Hafeez v. the United Kingdom	14198/20
	Nivette v. France	44190/98
	Rushing v. The Netherlands	3325/10
	Salem v. Portugal	26844/04
	Sanchez-Sanchez v. the United Kingdom [GC]	22854/20
	Sándor Varga and Others v. Hungary	39734/15, 35530/16 & 26804/18
	Törköly v. Hungary	4413/06
	T.P. and A.T. v. Hungary	37871/14 & 73986/14
	Trabelsi v. Belgium	140/10
	Vinter and others v. United Kingdom [GC]	66069/09 & 130/10 & 3896/10
mutual assistance	F. C. B. v. Italy	12151/86
	Güzelyurtlu and Others v. Cyprus and Turkey [GC]	36925/07
	Rantsev v. Cyprus and Russia	25965/04
	Pirozzi v. Belgium	21055/11
	Saribekyan and Balyan v. Azerbaijan	35746/11
	X v. the Netherlands	14319/17
	X and Others v. Bulgaria	22457/16
	Zoletic and Others v. Azerbaijan	20116/12
	A. M. v. Italy	37019/97

mutual assistance (admissibility of evidence)	Bátěk and Others v. the Czech Republic	54146/09
	Benedik v. Slovenia	62357/14
	De Legé v. the Netherlands	58342/15
	El Haski v. Belgium	649/08
	Kartsivadze v. Georgia	30680/09
	Schatschaschwili v. Germany [GC]	9154/10
	Solakov v. FYROM	47023/99
	Van Ingen v. Belgium	9987/03
	van Wesenbeeck v. Belgium	67496/10 & 52936/12
	Visy v. Slovakia	70288/13
	Zhukovskiy v. Ukraine	31240/03
mutual assistance (bank information)	G. S. B. v. Switzerland	28601/11
	De Legé v. the Netherlands	58342/15
mutual assistance (hearing witnesses)	Adamov v. Switzerland	3052/06
	Al Alo v. Slovakia	32084/19
	A. M. v. Italy	37019/97
	Bátěk and Others v. the Czech Republic	54146/09
	Breukhoven v. the Czech Republic	44438/06
	Dijkhuizen v. the Netherlands	61591/16
	Fąfrowicz v. Poland	43609/07
	Janyr v. the Czech Republic	42937/08
	Kartsivadze v. Georgia	30680/09
	Kostecki v. Poland	14932/09
	Marcello Viola v. Italy	45106/04
	Damir Sibgatullin v. Russia	1413/05
	Schatschaschwili v. Germany [GC]	9154/10
	Sigurður Einarsson and Others v. Iceland	39757/15
	Solakov v. FYROM	47023/99
	Stojkovic v. France and Belgium	25303/08
	Tseber v. Czech Republic	46203/08
	X and Others v. Bulgaria	22457/16

	Zhukovskiy v. Ukraine	31240/03
mutual assistance (ISP data)	Benedik v. Slovenia	62357/14
mutual assistance (seizure of assets)	Shorazova v. Malta	51853/19
mutual assistance (service of documents)	Fąfrowicz v. Poland	43609/07
	Damir Sibgatullin v. Russia	1413/05
	Somogyi v. Italy	67972/01
	Yeğer v. Turkey	4099/12
mutual assistance (temporary transfer)	Dijkhuizen v. the Netherlands	61591/16
	Hokkeling v. The Netherlands	30749/12
mutual assistance (videoconference)	Al Alo v. Slovakia	32084/19
	Dijkhuizen v. the Netherlands	61591/16
	Marcello Viola v. Italy	45106/04
	Sigurður Einarsson and Others v. Iceland	39757/15
nationality	Abdulazhon Isakov v. Russia	14049/08
	Garabayev v. Russia	38411/02
	K2 v. the United Kingdom	42387/13
	Said Abdul Salam Mubarak v. Denmark	74411/16
	Vlas and Others v. Romania	30541/12
ne bis in idem	E.G.M. v. Luxembourg	24015/94
	Veermäe v. Finland	38704/03
non bis in idem – see *ne bis in idem*		
nulla poena sine lege	Csoszánszki v. Sweden	22318/02
obligation to investigate – see *obligation to prosecute*		
obligation to prosecute[6]	Rantsev v. Cyprus and Russia	25965/04
	Zoletic and Others v. Azerbaijan	20116/12
parole – see *transfer of sentenced persons (early release)*		
postponement of extradition – see *extradition (postponement)*		
presumption of innocence	Ismoilov and others v. Russia	2947/06
refugee – see *asylum*		

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

relation between extradition and deportation or expulsion	Akram Karimov v. Russia	62892/12
	Batyrkhairov v. Turkey	69929/12
	Bozano v. Switzerland	9009/80
	Ismailov v. Russia	20110/13
	Khalikov v. Russia	66373/13
	Öcalan v. Turkey [GC]	46221/99
	Ozdil and Others v. the Republic of Moldova	42305/18
	Ramirez Sanchez v. France	28780/95
	Shenturk and Others v. Azerbaijan	41326/17, 8098/18, 8147/18 & 8384/18
	Zokhidov v. Russia	67286/10
release on parole – see *transfer of sentenced persons (early release)*		
res iudicata – see *ne bis in idem*		
right of access to court	Smith v. Germany	27801/05
right to life (procedural aspect)	Güzelyurtlu and Others v. Cyprus and Turkey [GC]	36925/07
	Makuchyan and Minasyan v. Azerbaijan and Hungary	17247/13
	Rantsev v. Cyprus and Russia	25965/04
	Romeo Castaño v. Belgium	8351/17
	Saribekyan and Balyan v. Azerbaijan	35746/11
rule of speciality	De Legé v. the Netherlands	58342/15
	Salem v. Portugal	26844/04
	Woolley v. United Kingdom	28019/10
	Zandbergs v. Latvia	71092/01
separation of family – see *family life (separation of family)*		
seizure of assets – see *mutual assistance (seizure of assets)*		
service of documents – see *mutual assistance (service of documents)*		
speciality – see *rule of speciality*		
temporary surrender – see *extradition (temporary surrender)*		
temporary transfer – see *mutual assistance (temporary transfer)*		
torture – see *ill-treatment*		

transfer of enforcement of sentence[7]	Garkavyy v. Ukraine	25978/07
	Grori v. Albania	25336/04
transfer of proceedings	Garkavyy v. Ukraine	25978/07
	Grori v. Albania	25336/04
	Güzelyurtlu and Others v. Cyprus and Turkey [GC]	36925/07
transfer of sentenced persons	Drozd and Janousek v. France and Spain	12747/87
	Mitrović v. Serbia	52142/12
	Palfreeman v. Bulgaria	59779/14
	Passaris v. Greece	53344/07
	Plepi v. Albania and Greece	11546/05, 33285/05 & 33288/05
	Selmouni v. France [GC]	25803/94
	Serce v. Romania	35049/08
	Smith v. Germany	27801/05
	Willcox and Hurford v. United Kingdom	43759/10 & 43771/12
	Zhernin v. Poland	2669/13
transfer of sentenced persons (Additional Protocol, Article 2)	Garkavyy v. Ukraine	25978/07
transfer of sentenced persons (Additional Protocol, Article 3)	Csoszánszki v. Sweden	22318/02
	Kupinskyy v. Ukraine	5084/18
	Müller v. Czech Republic	48058/09
	Veermäe v. Finland	38704/03
transfer of sentenced persons (conversion of sentence)	Csoszánszki v. Sweden	22318/02
	Kupinskyy v. Ukraine	5084/18
	Veermäe v. Finland	38704/03
transfer of sentenced persons (early release)	Csoszánszki v. Sweden	22318/02
	Kupinskyy v. Ukraine	5084/18
	Makuchyan and Minasyan v. Azerbaijan and Hungary	17247/13

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

	Veermäe v. Finland	38704/03
videoconference – see *mutual assistance (videoconference)*		
witness immunity – see *mutual assistance (hearing witnesses)*		

B. Summaries of case law relevant for the application of the European Convention on Extradition (CETS 024) and its Additional Protocols (CETS 086, 098, 209 and 212)

Case Data	*Summary*
X. v. Austria and Yugoslavia No.: 2143/64 Type: Decision Date: 30 June 1964 Articles: N: 3, 5§1(f) Keywords: – asylum – extradition (grounds for refusal) – ill-treatment Links: French only Translations: not available	*Circumstances:* The applicant, a Yugoslavian national, indicted for having stolen money from a state-owned company which he had directed, was sentenced to a nine-year imprisonment. He fled from Yugoslavia to Austria, where he filed an asylum claim and never received an answer. The Yugoslavian Government called for the claimant's extradition and he was ultimately detained. *Relevant complaint:* The applicant complained that his conviction in Yugoslavia had been preceded by "acts of brutality and violence" and repeated attacks on the rights of the defense and that the real offenders in the case were members of the Communist Party, who would have been protected at the expense of an innocent man, the applicant, a practicing Catholic opposed to the Titoist regime. The Austrian authorities had turned a blind eye, despite all the applicant's efforts, to the political considerations underlying the charges brought against him by Yugoslavia. His extradition would attract "very serious and inhuman retaliation". *Commission's conclusions:* Extradition does not constitute "inhuman or degrading treatment" within the meaning of Article 3 of the Convention. The Contracting States accepted to restrict the free exercise of the powers conferred on them by general international law, including the right to control the entry of and the departure of foreigners, to the extent and the limit of the obligations which they have assumed under the Convention. Extradition of an individual may, in exceptional cases, prove to be contrary to the Convention and particularly to Article 3. The extradition in question did not lie within a context that would cast doubt on its compatibility with the Convention, especially since the Austrian courts had expressly approved it and the Office of the United Nations High Commissioner for Refugees had agreed to it as well. *[page 6]*
K v. Italy and Federal Republic of Germany No.: 5078/71 Type: Decision (Partial) Date: 14 December 1972 Articles: N: 3, 5, 6§2, 7, 8, 9, 10, 14, 1 (Prot. 4) Keywords:	*Circumstances:* Extradition from Italy to Germany. *Relevant complaint:* The applicant alleged that the Federal Republic of Germany unlawfully requested his extradition from Italy and that he was wrongly detained in, and extradited from, Italy in 1972. *Commission's conclusions:* The applicant further complains that the Federal Republic of Germany unlawfully requested his extradition from Italy and that he was wrongly extradited by the Italian authorities in 1972. The Commission has examined this complaint, insofar as it is directed against the Federal Republic of Germany, under Article 5§1 of the Convention. This provision implicitly accepts extradition. An examination of this complaint, insofar as it is directed against the Federal Republic of

– extradition (custody) – custody (lawfulness) Links: English only Translations: not available	Germany, does not therefore disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in the above Article. Insofar as the applicant's complaint concerning his extradition is directed against Italy, the Commission observes that this State has signed and ratified the Convention but has not yet recognised the competence of the Commission to receive applications lodged by individuals under Article 25. The rights and freedoms guaranteed by the Convention can therefore not be invoked before the Commission by a private individual with regard to Italy. The Commission observes that, as the German authorities can not be held liable under the Convention for the applicant's detention in Italy pending his extradition, the period so spent by him cannot be taken into consideration by the Commission under Article 5§3. *[pages 3 and 4]*
Lynas v. Switzerland No.: 7317/75 Type: Decision Date: 6 October 1976 Articles: N: 2, 3, 5§1(f), 5§3, 5§4, 6§1, 18 Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – extradition (documents in support of) – fair trial – ill-treatment – interim measure Links: English, French Translations: not available	*Circumstances:* Extradition from Switzerland to the United States of America for the purposes of prosecution. Interim measure not complied with. *Relevant complaints:* 1. If extradited, the applicant would be killed by CIA agents. 2. Length of custody pending extradition for three years and eight months excessive. 3. Lack of fair trial (equality of arms) in extradition proceedings. 4. Lawfulness of custody could not be examined by a court until the extradition case was brought to a court. *Commission's conclusions:* 1. Uncorroborated declarations don't constitute satisfactory prima facie evidence to prove real risk of ill-treatment. *[page 165, para. 1]* 2. Article 5§3 of the Convention does not apply to custody pending extradition. If extradition proceedings are not conducted with the requisite diligence, custody pending extradition would cease to be justifiable under Article 5§1(f) of the Convention. A person who complains of the length of his/her custody should have drawn up – and at least reasonably renewed – a request for release. *[pages 167 and 168, paras. 3 and 4]* 3. The authorities of the requested State are in no way obliged to authorise the production before them in extradition proceedings of evidence of facts relating to the substance of the charge or the criminal prosecution. *[page 168, para. 5]* 4. The person who complains of not having had, at a particular time, a judicial remedy against his/her custody cannot claim to be a victim of a violation of the Convention if he/she did not pursue this judicial remedy when it was available to him/her. *[page 141]*
H. v. Spain	*Circumstances:* Extradition from Spain to the United States of America.

No.: 10227/82 Type: Decision Date: 15 December 1983 Articles: N: 6§1 Keywords: – extradition (procedure) – fair trial Links: English (extracts), French (extracts) Translations: not available	*Relevant complaint:* The applicant complained of having had inadequate legal representation and interpretation in the extradition proceedings contrary to Article 6§1 of the Convention. *Commission's conclusions:* The principal question is whether the guarantee of a fair hearing under Article 6§1 of the Convention is applicable to extradition proceedings, i. e. whether such proceedings can be deemed to be a determination of a criminal charge. In the Commission's view, the word 'determination' involves the full process of the examination of an individual's guilt or innocence of an offence, and not the mere process of determining whether a person can be extradited to another country. *[page 2]*
K. v. Belgium No.: 10819/84 Type: Decision Date: 5 July 1984 Articles: N: 5§2 Keywords: – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – extradition (custody) Links: English, French Translations: not available	*Circumstances:* Extradition from Belgium to the United States of America for the purposes of prosecution. *Relevant complaint:* The applicant has never been properly informed of the reasons for his arrest. *Commission's conclusions:* While it is true that insufficiency of information of the charges held against an arrested person may be relevant for the right to a fair trial under Article 6 of the Convention for persons arrested in accordance with Article 5§1(c) of the Convention, the same does not apply to the arrest with a view to extradition as these proceedings are not concerned with the determination of a criminal charge. It appears from the warrant of arrest that the applicant was suspected of fraud, and that his arrest was being ordered for the purposes of extradition to the United States. The above elements constituted sufficient information. *[page 231]*
Bozano v. Switzerland No.: 9009/80 Type: Decision (Partial) Date: 12 July 1984 Articles: N: 5§1(f), 18 Keywords: – custody (lawfulness) – expulsion – in absentia	*Circumstances:* Refusal of extradition from France to Italy for the purposes of enforcement of a sentence imposed in absentia. Instead, the applicant was expelled from France to Switzerland where he was arrested for the purposes of his extradition from Switzerland to Italy. *Relevant complaint:* Unlawfulness of arrest in Switzerland after the applicant's expulsion from France as the co-operation between French and Swiss authorities to arrest him was designed to circumvent the French authorities' refusal of his extradition to Italy. *Commission's conclusion:* A person's arrest for the purposes of extradition proceedings following expulsion from a third State that refused to extradite the to the requesting State does not violate the Convention if it was done in accordance with domestic law and not arbitrarily. *[pages 69 and 70]*

– relation between extradition and deportation or expulsion Links: English, French Translations: not available	
Sanchez-Reisse v. Switzerland No.: 9862/82 Type: Judgment Date: 21 October 1986 Articles: Y: 5§4 Keywords: – custody (judicial review) – extradition (custody) Links: English, French Translations: Bulgarian, Spanish	*Circumstances:* Extradition from Switzerland to Argentina for the purposes of prosecution. Applicant's repeated requests for provisional release denied by Swiss authorities. *Relevant complaints:* The Swiss system for appealing against custody pending extradition did not afford adequate safeguards under Article 5§4 of the Convention, namely 1. it provided no direct access to a court, 2. it was not possible to conduct one's own defence, 3. it was not possible to reply to the State's opinion and to appear in person before a court, 4. the length of the proceedings was excessive. *Court's conclusions:* 1. As extradition, by its very nature, involves a State's international relations, it is understandable that the executive should have an opportunity to express its views on a measure likely to have an influence in such a sensitive area. *[para. 45]* 2. Requirement of assistance of a lawyer in extradition proceedings affords an important guarantee to the person whose extradition is sought and who is, by definition, a foreigner in the country in question and, therefore, often unfamiliar with its legal system. *[para. 47]* 3. Article 5§4 of the Convention requires the State to provide, in some way or another, the person whose extradition is sought with the benefit of an adversarial procedure. Giving the person the possibility of submitting written comments on the State's opinion would have constituted an appropriate means. *[para. 51]* 4. The extradition issue forms the backcloth to the requests for release and necessarily influences the consideration of the matter. Whenever a foreign State's request for extradition does not, at the outset, appear unacceptable to the authorities of the requested State, custody is the rule and release the exception. The fact nevertheless remains that the applicant is entitled to a speedy decision – whether affirmative or negative – on the lawfulness of his custody. *[para. 57]*
Soering v. United Kingdom No.: 14038/88 Type: Judgment Date: 7 July 1989	*Circumstances:* Extradition from the United Kingdom to the United States of America for the purposes of prosecution that could result in imposition of death penalty. *Relevant complaints:*

Articles: Y: 3; N: 6§3(c), 6§1, 6§3(d), 13 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment Links: English, French Translations: Albanian, Armenian, Bosnian, Macedonian, Russian, Slovak, Spanish	1. Exposure to the so-called "death row phenomenon" in case of extradition and subsequent imposition of death penalty, even if such penalty is not enforced, would amount to violation of Article 3 of the Convention. 2. Assurance provided by the requesting State was so worthless in its content that no reasonable requested State could regard it as satisfactory. *Court's conclusions:* 1. No derogation from the prohibition of ill-treatment under Article 3 of the Convention is permissible (absolute prohibition of torture and of inhuman or degrading treatment or punishment). The decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to ill-treatment in the requesting State. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. *[paras. 88 and 91]* 2. Objectively it cannot be said that an assurance to inform the judge at the sentencing stage of the wishes of the requested State for the death penalty to not be imposed eliminates the risk of the death penalty being imposed. *[para. 98]*
Stocké v. Germany No.: 11755/85 Type: Judgment Date: 19 March 1991 Articles: N: 5§1, 6§1 Keywords: – extraordinary rendition Links: English, French Translations: Spanish	*Circumstances:* The applicant, against whom criminal proceedings had been instituted in Germany absconded and was located in France. A german police informer arranged to meet with the applicant in Luxembourg and the German authorities asked the Luxembourg police whether the latter could arrest the applicant on the ground that he had committed criminal offences in the Grand Duchy and deport him to the Federal Republic of Germany. The Luxembourg police informed that the applicant could demand to be taken to the French border; without an international arrest warrant, however, no action could be taken against Mr Stocké at all. Subsequently, the German police informer met with the applicant in Strasbourg and prented to arrange a flight to Luxembourg. In fact, however, the German police informer ask the pilots to touch down in Germany where the applicant was immediately arrested and taken into custody. *Relevant complaint:* The applicant claimed to have been victim of collusion between German authorities and the German police informer for the purpose of bringing him back to the Federal Republic of Germany against his will with a view to arresting him. According to the applicant, the prosecuting authorities considered that it was too uncertain whether an extradition request to France would succeed and had preferred to make use of a police informer to do "the dirty work abroad". The applicant alleged

	that the authorities were acquainted in minute detail with the plan to kidnap him in Strasbourg; the failed attempt to have him expelled from Luxembourg on trumped-up charges showed, moreover, that the prosecution authorities and the police informer had cooperated for unlawful purposes. *Court's conclusions:* It had not been established that the co-operation between the German authorities and the police informer extended to unlawful activities abroad. Accordingly, it did not seem necessary to examine, whether the applicant's arrest in the Federal Republic of Germany would have violated the Convention. *[pages 12 and 13]*
Cruz Varas and others v. Sweden No.: 15576/89 Type: Judgment Date: 20 March 1991 Articles: N: 3, 8, 25§1 Keywords: – asylum – expulsion – family life (separation of family) – ill-treatment – interim measure Links: English, French Translations: Albanian, Armenian, Georgian, Russian, Slovak, Spanish	*Circumstances:* Expulsion from Sweden to Chile. Interim measure not complied with. *Relevant complaints:* 1. The expulsion constituted ill-treatment in breach of Article 3 of the Convention because of the risk that the applicant would be tortured by the Chilean authorities and because of the trauma involved in being sent back to a country where he had previously been tortured. *2.* All three applicants alleged that the expulsion of the first applicant led to a separation of the family and amounted to a violation of their right to respect for family life contrary to Article 8 of the Convention. 3. The failure by the Swedish Government to comply with the Commission's request under Rule 36 of its Rules of Procedure not to expel the applicants amounted to a breach of Sweden's obligation under Article 25§1 of the Convention not to hinder the effective exercise of the right of petition to the Commission. *Court's conclusions:* 1. Even if allowances are made for the apprehension that asylum-seekers may have towards the authorities and the difficulties of substantiating their claims with documentary evidence, the first applicant's complete silence as to his alleged clandestine activities and torture by the Chilean police until more than eighteen months after his first interrogation by the Swedish Police casts considerable doubt on his credibility in this respect. His credibility is further called into question by the continuous changes in his story following each police interrogation and by the fact that no material has been presented to the Court which substantiates his claims of clandestine political activity. In any event, a democratic evolution was in the process of taking place in Chile which had led to improvements in the political situation and, indeed, to the voluntary return of refugees from Sweden and elsewhere. The Court also attaches importance to the fact that the Swedish authorities had particular knowledge and experience in evaluating claims of the present nature by virtue of the large number of Chilean asylum-seekers who had arrived in Sweden since 1973. *[paras. 78, 80 and 81]*

	2. The evidence adduced does not show that there were obstacles to establishing family life by all the applicants in their home country. *[para. 88]* 3. Non-compliance with interim measure in this case did not hinder the applicants in the exercise of the right of petition to the Commission to any significant degree and, therefore, did not violate Article 25 of the Convention. *[para. 104]*
Vilvarajah and others v. United Kingdom Nos.: 13163/87 & 13164/87 & 13165/87 & 13447/87 & 13448/87 Type: Judgment Date: 30 October 1991 Articles: N: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: Slovak, Spanish	*Circumstances:* Expulsion of five Tamils from the United Kingdom to Sri Lanka following failed applications for asylum. *Relevant complaint:* Expulsion exposed the applicants to ill-treatment in Sri Lanka given the deteriorating general situation in Sri Lanka and greater risk of ill-treatment of young Tamil men by the security forces of Sri Lanka. *Court's conclusions:* In determining whether substantial grounds have been shown for believing the existence of a real risk of treatment contrary to Article 3 of the Convention the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained proprio motu. The existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion; the Court is not precluded, however, from having regard to information which comes to light subsequent to the expulsion. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. *[para. 107]*
Kolompar v. Belgium No.: 11613/85 Type: Judgment Date: 24 September 1992 Articles: N: 5§1, 5§4 Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) Links: English, French Translations: Spanish	*Circumstances:* Extradition from Belgium to Italy for the purposes of enforcement of a sentence imposed in absentia. *Relevant complaints:* 1. The applicant's custody for the purposes of extradition proceedings had served, unlawfully, to ensure that the sentence which he was eventually given by the Belgian courts in Belgian criminal proceedings, on charges unrelated to the extradition, was executed. 2. The extradition proceedings had not been conducted at a reasonable pace. *Court's conclusions:* 1. Because Belgian authorities counted the custody against the sentence imposed in the Belgian criminal proceedings, the Court did not consider that period of custody to be custody for the purposes of extradition proceedings. *[para. 36]* 2. The Belgian State cannot be held responsible for the delays to which the applicant's conduct gave rise. The latter cannot validly complain of a situation which he largely created. *[para. 42]*

E.G.M. v. Luxembourg No.: 24015/94 Type: Decision Date: 20 May 1994 Articles: N 3, 6§1 Keywords: – extradition (grounds for refusal) – extradition (procedure) – fair trial – ill-treatment – ne bis in idem Links: English, French Translations: not available	*Circumstances:* Extradition of a Colombian national from Luxembourg to the United States of America for the purposes of prosecution. Extradition granted subject to the condition that the applicant could bot be prosecuted in the United States of America for those offences for which he had already been prosecuted and tried in Luxembourg. *Relevant* complaints: 1. The applicant complained of a violation of the *ne bis in idem* principle. He argued that the request for extradition was based on the same charges as those on which he had already been tried in Luxembourg. 2. He also complained that the right of defence were infringed during the extradition proceedings. 3. The applicant claimed that his extradition was contrary to Article 3 of the Convention. *Court's conclusions:* 1. In the context of crtiminal proceedings in different States, respect for the *ne bis in idem* principle is not guaranteed by the Convention, or by Article 4 of Protocol No. 7. Similarly, the rights and freedoms recognized in the Convention and its Protocols do not include any right not to be extradited. The words "determination of a criminal charge" in Article 6§1 of the Convention relate to the full process of the examination of an individual's guilt or innocence of an offence and not merely to the process of determining whether or not a person may be extradited to another country. In this case, the Luxembourg authorities were simply required to decide whether the formal conditions for extradition were satisfied. *[page 5]* 2. Article 6§1 of the Convention does not apply to a court's examination of an extradition request from a foreign State. *[page 1]* 3. The extradition of a person to a country where there are serious reasons to believe that he will be subjected to treatment contrary to Article 3 of the Convention may raise an issue under this provision. This is not the case when the individual's allegations are not supported by any persuasive *prima facie* evidence. *[page 1]*
Quinn v. France No.: 18580/91 Type: Judgment Date: 22 March 1995 Articles: Y: 5§1; N: 5§3 Keywords: – custody (length)	*Circumstances:* Extradition from France to Switzerland for the purposes of prosecution. Custody for the purposes of extradition proceedings for one year, eleven months and six days. *Relevant complaints:* 1. Continued custody, following an order by French court in domestic criminal proceedings for the applicant to be immediately released, arbitrary in order to leave the Paris public prosecutor's office time to instigate the setting in motion of the extradition proceedings. Custody pending extradition had simply amounted to the extension, on a different legal basis, of the period of remand detention

– extradition (custody) Links: English, French Translations: Latvian, Spanish Ukrainian	which had just come to an end in the criminal proceedings conducted in France. Alleged an abuse of the extradition procedure for purposes relating to the investigation in France. 2. Length of custody pending extradition for almost 2 years unjustified and disclosed an abuse of the extradition procedure. The true aim of the French authorities had been to keep the applicant at their disposal for as long as was necessary to pursue the investigation in France. *Court's conclusions:* 1. Some delay in executing a decision ordering the release of a detainee is understandable. However, in the instant case the applicant remained in detention for 11 hours after the Indictment Division's decision directing that he be released "forthwith", without that decision being notified to him or any move being made to commence its execution. *[para. 42]* 2. No evidence that the detention pending extradition pursued an aim other than that for which it was ordered and that it was pre-trial detention in disguise. The fact that extradition proceedings and domestic criminal proceedings were conducted concurrently cannot in themselves warrant the conclusion that there was abuse, for purposes relating to national law, of the extradition procedure. The applicant's detention with a view to extradition was, however, unusually long. Deprivation of liberty is justified only for as long as extradition proceedings are being conducted. It follows that if such proceedings are not being conducted with due diligence, the custody will cease to be justified under Article 5§1(f) of the Convention. *[paras. 47 and 48]*
Nasri v. France No.: 19465/92 Type: Judgment Date: 13 July 1995 Articles: Y: 8 Keywords: – expulsion – family life (separation of family) Links: English, French Translations: Romanian, Russian, Spanish	*Circumstances:* Expulsion from France to Algeria of a deaf and dumb Algerian national, who lived in France since age 5. Between 1981 and 1993, the applicant committed a number of criminal offences in France and his expulsion was ordered on the ground that his presence in France represented a threat to public order. *Relevant complaint:* Expulsion in this case could not be regarded as necessary in a democratic society in view of the fact that the applicant was deaf and dumb, illiterate and with no command of deaf and dumb sign language and, therefore, would have enormous difficulties in communicating if removed from his family circle, the only persons capable of understanding the signs he used to express himself. His parents and his brothers and sisters had not left France since 1965; six of his brothers and sisters had acquired French nationality. He himself had never severed links with his family; indeed, apart from certain periods spent with his sister and his brother-in-law, he had always lived at his parents' home. In addition, the applicant had no knowledge of Arabic. The little schooling he had been given had been received solely in France and his contacts with the North African community were confined to the second generation, the very large majority of whom did not speak Arabic.

	Court's conclusions: In view of the accumulation of special circumstances, notably the applicant's situation as a deaf and dumb person, capable of achieving a minimum psychological and social equilibrium only within his family, the majority of whose members are French nationals with no close ties with Algeria, the decision to expel the applicant, if executed, would not be proportionate to the legitimate aim pursued. *[para. 46]*
Ramirez Sanchez v. France No.: 28780/95 Type: Decision Date: 24 June 1996 Articles: N: 3, 5§1 Keywords: – custody (lawfulness) – expulsion – relation between extradition and deportation or expulsion Links: English, French Translations: not available	*Circumstances:* Expulsion (disguised extradition) of a well-known terrorist from Sudan to France where he was subject to criminal prosecution. *Relevant complaint:* Since the applicant was seized abroad, the French judicial authorities should have issued an international arrest warrant. Extradition procedure laid down by French law had not been followed, although he had allegedly been expelled from Sudan at the French Interior Ministry. He claimed to have been wrongfully extradited since the unlawfulness of the request for him to be handed over gad rendered his arrest void under French law. In the absence of an international arrest warrant, there was, at the time and place of his being handed over to the French authorities, no lawful authority for his arrest and detention by French officers in Khartoum. *Commission's conclusions:* From the time of being handed over to French officers, the applicant was effectively under the authority, and therefore the jurisdiction, of France, even if this authority was, in the circumstances, being exercised abroad. It does not appear that any cooperation which occurred in this case between the Sudanese and French authorities involved any factor which could raise problems from the point of view of Article 5 of the Convention, particularly in the field of the fight against terrorism, which frequently necessitates cooperation between States. The fact that the arrest warrant was not served on the applicant until he left the aeroplane after having landed in France does not mean that the alleged prior deprivation of his liberty had no legal basis in French law. Even assuming that the circumstances in which the applicant arrived in France could be described as a disguised extradition, this could not, as such, constitute a breach of the Convention. *[pages 161 and 162]*
Chahal v. United Kingdom No.: 22414/93 Type: Judgment [GC] Date: 15 November 1996 Articles: Y: 3, 5§4, 13; N: 5§1 Keywords: – assurances – custody (judicial review)	*Circumstances:* Expulsion of a Sikh activist from the United Kingdom to India following failed application for asylum. The Government of India provided assurance that the applicant, if expelled to India, "would enjoy the same legal protection as any other Indian citizen, and that he would have no reason to expect to suffer mistreatment of any kind at the hands of the Indian authorities." *Relevant complaint:* If expelled to India, the applicant would be subjected to ill-treatment, as he was a well-known supporter of Sikh separatism. *Court's conclusions:* Assurance provided by the Government of India insufficient, as despite the efforts of that Government to bring about reform, the violation of human rights by certain members of the

– custody (lawfulness) – custody (length) – expulsion – ill-treatment Links: English, French Translations: Bosnian, Russian, Slovak, Spanish Chamber Judgment: not available (jurisdiction relinquished by the Chamber to the Grand Chamber)	security forces in Punjab and elsewhere in India is a recalcitrant and enduring problem. The applicant's high profile would be more likely to increase the risk to him of harm. *[paras. 105 and 106]*
D. v. United Kingdom No.: 30240/96 Type: Judgment Date: 2 May 1997 Articles: Y: 3; N: 8, 13 Keywords: – expulsion – ill-treatment Links: English, French Translations: Russian, Spanish	*Circumstances:* Expulsion from the United Kingdom to St. Kitts where he could not receive adequate medical treatment for AIDS and AIDS-related infections. *Relevant complaint:* Expulsion to St. Kitts would condemn the applicant to spend his remaining days in pain and suffering in conditions of isolation, squalor and destitution, as he had no close relatives or friends in St. Kitts, no accommodation, no financial resources and no access to any means of social support. The withdrawal of his current medical treatment would hasten his death on account of the unavailability of similar treatment in St Kitts where hospital facilities were extremely limited and certainly not capable of adequate medical treatment for AIDS-related infections. His death would thus not only be further accelerated, it would also come about in conditions which would be inhuman and degrading. *Court's conclusions:* In view of these exceptional circumstances and bearing in mind the critical stage now reached in the applicant's fatal illness, his expulsion to St. Kitts would amount to ill-treatment in violation of Article 3 of the Convention. Although it cannot be said that the conditions which would confront the applicant in the receiving country are themselves a breach of the standards of Article 3 of the Convention, his removal would expose him to a real risk of dying under most distressing circumstances. Against this background the Court emphasizes that aliens who have served their prison sentences and are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State during their stay in prison. *[para. 53 and 54]*
T. I. v. United Kingdom No.: 43844/98 Type: Decision	*Circumstances:* Expulsion from the United Kingdom to Germany.

Date: 7 March 2000 Articles: N: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	*Relevant complaint:* The applicant would be summarily expelled from Germany to Sri Lanka (his asylum application in Germany had been already denied) where he would be ill-treated by both the separatist and pro-Government forces. *Court's conclusions:* Indirect removal in to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention. Nor can the United Kingdom rely automatically in that context on the arrangements made in the Dublin Convention concerning the attribution of responsibility between European countries for deciding asylum claims. As the applicant could seek not only asylum but also other forms of protection in Germany from being expelled to Sri Lanka, his expulsion to Germany itself does not create a real risk of ill-treatment. *[page 15 and 16]*
Jabari v. Turkey No.: 40035/98 Type: Judgment Date: 11 July 2000 Articles: Y: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: Spanish, Turkish, Ukrainian	*Circumstances:* Expulsion from Turkey to Iran of person granted refugee status by the UNHCR. Application for asylum denied because the applicant had failed to file it within 5 days since her arrival to Turkey. *Relevant complaint:* In Iran, the applicant would be prosecuted and sentenced to a form of inhuman punishment prescribed by Iranian law for adultery (stoning to death, flogging and whipping). *Court's conclusions:* The applicant's failure to comply with the five-day registration requirement under the Asylum Regulation 1994 denied her any scrutiny of the factual basis of her fears about being removed to Iran. The automatic and mechanical application of such a short time-limit for submitting an asylum application must be considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention. *[para. 40]*
Maaouia v. France No.: 39652/98 Type: Judgment [GC] Date: 5 October 2000 Articles: N: 6§1 Keywords: – expulsion – fair trial Links: English, French	*Circumstances:* Expulsion of an asylum seeker, who married a French national with a disability and who was convicted and sentenced of a criminal offence, from France to Tunisia. *Relevant complaint:* The applicant complained that the length of the proceedings (1994-1998) was unreasonable in view of Article 6§1 of the convention. Having regard, in particular, to the effects that the proceedings in issue had had on his family life, Article 6§1 of the Convention should be applicable. *Court's conclusions:* Decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6§1 of the Convention. *[para. 40]*

Translations: : Azerbaijani, Czech, Spanish Chamber Judgment: not available (jurisdiction relinquished by the Chamber to the Grand Chamber)	*NOTE: There are two dissenting opinions stating that, based upon the legal history of the drafting of Article 6 of the Convention, extensive and dynamic interpretation is applicable to the case.*
Nivette v. France No.: 44190/98 Type: Decision Date: 3 July 2001 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English, French Translations: not available	*Circumstances:* Extradition from France to the United States of America for the purposes of prosecution for murder. The Sacramento County District Attorney provided assurance that his office would not seek death penalty for the applicant. According to a further assurance, sentence of life imprisonment without the possibility of parole could also not be imposed. *Relevant complaint:* Extradition to the United States would breach Article 3 of the Convention if he were to be sentenced to life imprisonment without any possibility of early release. Assurances provided by the Sacramento County District Attorney not sufficiently binding on the State of California, the best assurance would be one from the State Governor or the President of the United States. What was in issue in the instant case was not parole, which did not exist in the United States, but only remission; if he was sentenced to thirty-five years' imprisonment and depending on what remission he was granted, he would come out of prison when he was anything between 86 and 91 years old and would accordingly have no chance of making a new start in life. *Court's conclusions:* The United States government's declarations are not necessarily inadequate or ineffective on that account, inasmuch as they complement the undertakings made previously and subsequently by the Californian prosecuting authorities. It is the view of the Californian prosecuting authorities that is the decisive factor in this instance. The assurances obtained by the French government are such as to avert the danger of the applicant being sentenced to life imprisonment without any possibility of early release. His extradition, therefore, cannot expose him to a serious risk of treatment or punishment prohibited by Article 3 of the Convention. *[pages 6 and 7]*
Boultif v. Switzerland No.: 54273/00 Type: Judgment Date: 2 August 2001 Articles: Y: 8 Keywords: – expulsion – family life (separation of family)	*Circumstances:* Expulsion from Switzerland to Algeria following enforcement of a sentence of imprisonment imposed on the applicant in Switzerland. *Relevant complaint:* The Swiss authorities had not renewed the applicant's residence permit. As a result, he had been separated from his wife, who was a Swiss citizen and could not be expected to follow him to Algeria. The mere fact that his wife spoke French was insufficient to make it possible for her to join him in Algeria. Moreover, in Algeria people lived in constant fear on account of fundamentalism. *Court's conclusions:* In assessing the relevant criteria in such a case, the Court will consider the nature and seriousness of the offence committed by the applicant; the duration of the applicant's stay in the

Links: English, French Translations: Albanian	country from which he is going to be expelled; the time which has elapsed since the commission of the offence and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage; other factors revealing whether the couple lead a real and genuine family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; and whether there are children in the marriage and, if so, their age. Not least, the Court will also consider the seriousness of the difficulties which the spouse would be likely to encounter in the applicant's country of origin, although the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself preclude expulsion. The applicant's wife has never lived in Algeria, she has no other ties with that country, and indeed does not speak Arabic. In these circumstances she cannot, in the Court's opinion, be expected to follow her husband, the applicant, to Algeria. When the Swiss authorities decided to refuse permission for the applicant to stay in Switzerland, he presented only a comparatively limited danger to public order. *[paras. 48, 53 and 55]*
Einhorn v. France No.: 71555/01 Type: Decision Date: 16 October 2001 Articles: N: 3, 6 Keywords: – assurances – death penalty – extradition (grounds for refusal) – fair trial – ill-treatment – in absentia – life sentence Links: English, French Translations: not available	*Circumstances:* Extradition from France to the United States of America for the purposes of a sentence of life imprisonment imposed in absentia for an offence for which death penalty could be imposed. Extradition first denied but later granted on the basis of a fresh extradition request following a change in the laws of Pennsylvania and under the condition that the applicant would be granted re-trial and death penalty would not be sought, imposed or carried out. *Relevant complaints:* 1. Extradition would breach Article 3 of the Convention in that there were substantial grounds for believing that the applicant faced a real risk of being sentenced to death and hence of being exposed to the "death-row phenomenon", a source of inhuman or degrading treatment or punishment. 2. The applicant was likely to have to serve a life sentence without any real possibility of remission or parole in breach of Article 3 of the Convention. 3. The law allowing for re-trial of in absentia sentenced persons in Pennsylvania was a specially passed law with retrospective effect, which had been enacted by the Pennsylvania legislature with the sole aim of influencing the judicial outcome of the extradition proceedings instituted against him in France, thereby breaching his right to a fair trial. 4. Even if the applicant could in fact have a new trial in Pennsylvania, such a trial would not satisfy the requirements of Article 6 of the Convention in view of the "pressure of legal and media attention" which the case had generated in the United States and which a jury would be not have been able to avoid.

	Court's conclusions: 1. The applicant was not sentenced to death at his trial *in absentia* in Pennsylvania. The offence of which he stood accused was committed in 1977, before the statute of 13 September 1978 restoring the death penalty in Pennsylvania came into force. The principle that the law should not have retrospective effect would therefore preclude his being sentenced to death after a retrial in that State. That is confirmed by the affidavit sworn by the District Attorney of Philadelphia County and by the diplomatic notes from the United States embassy. The Government obtained sufficient guarantees that the death penalty would not be sought, imposed or carried out. *[para. 26]* 2. It follows from the Pennsylvania Constitution and from the legislative provisions in force in that State that the Governor of Pennsylvania may commute a life sentence to another one of a duration which affords the possibility of parole. Admittedly, it follows from the above provisions that the possibility of parole for prisoners serving life sentences in Pennsylvania is limited. It cannot be inferred from that, however, that if the applicant was sentenced to life imprisonment after a new trial in Pennsylvania, he would not be able to be released on parole, and he did not adduce any evidence to warrant such an inference. *[para. 27]* 3. The proceedings instituted by the French authorities in the light of the change in the law in Pennsylvania and of the extradition request of 2 July 1998 are quite distinct from the first set of proceedings. Consequently, it cannot be argued that the fact of taking into account the statute of 27 January 1998 influenced the outcome of proceedings which were already under way or that, in ruling for a second time on the applicant's extradition, the Indictment Division disregarded the principle of *res judicata*. While serious questions arise as to the conformity of the statute of 27 January 1998 with the Pennsylvania Constitution, they do not, in the absence of a finding by the competent courts in Pennsylvania, prove that it is unconstitutional. It cannot be inferred from them, without going thoroughly into the question whether the statute is constitutional, that there are "substantial grounds" for believing that the applicant will be unable to obtain a retrial in Pennsylvania or that the denial of justice he fears is "flagrant". It was patently not for the respondent State to determine such an issue before granting extradition, and it cannot be argued that such a duty arose from its obligations under the Convention. *[paras. 31 and 33]* 4. The Court does not exclude the possibility that the fact of being tried in such circumstances may raise an issue under Article 6§1 of the Convention. It points out, however, that where extradition proceedings are concerned, an applicant is required to prove the "flagrant" nature of the denial of justice which he fears. In the instant case the applicant did not adduce any evidence to show that,

	having regard to the relevant American rules of procedure, there are "substantial grounds for believing" that his trial would take place in conditions that contravened Article 6 of the Convention. *[para. 34]*
Čonka v. Belgium No.: 51564/99 Type: Judgment Date: 5 February 2002 Articles: Y: 5§1, 5§4, 13, 4 (Prot. 4); N: 5§2, 13 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – expulsion – ill-treatment Links: English, French Translations: Albanian, Armenian, Georgian, Ukrainian	*Circumstances:* Expulsion of four Roma from Belgium to Slovakia following failed applications for asylum. *Relevant complaint:* The applicants had no remedy available to complain of the alleged violations of Article 3 of the Convention that satisfied the requirements of Article 13 of the Convention. There was no guarantee of being heard in the procedure before the Commissioner-General for Refugees and Stateless Persons since, although that was the practice, it did not constitute a right. The applicant had no access to his case file, could not consult the record of notes taken at the hearing or demand that his observations be put on record. As regards the remedies available before the Conseil d'Etat, they were not effective for the purposes of Article 13 of the Convention, as they had no automatic suspensive effect. In expulsion cases, in which enforcement of the contested State measure produced irreversible consequences, the effectiveness of the remedy depended on its having suspensive effect, which was thus a requirement of Article 13 of the Convention. *Court's conclusions:* The "effectiveness" of a "remedy" within the meaning of Article 13 of the Convention does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13 of the Convention, the aggregate of remedies provided for under domestic law may do so. The notion of an effective remedy under Article 13 requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible. It is not possible to exclude the risk that in a system where stays of execution must be applied for and are discretionary they may be refused wrongly, in particular if it was subsequently to transpire that the court ruling on the merits has nonetheless to quash a deportation order for failure to comply with the Convention, for instance, if the applicant would be subjected to ill-treatment in the country of destination or be part of a collective expulsion. In such cases, the remedy exercised by the applicant would not be sufficiently effective for the purposes of Article 13 of the Convention. *[paras. 75, 79 and 82]*
Peñafiel Salgado v. Spain No.: 65964/01 Type: Decision	*Circumstances:* The applicant, an Ecuadorian citizen, was prosecuted in Ecuador. He left Ecuador for Spain and Ecuador requested his extradition from Spain. The applicant filed for asylum in Spain. While the extradition and asylum procedures were ongoing in Spain, the applicant left for Lebanon where he

Date: 16 April 2002 Articles N: 2, 3, 6, 8 Keywords: – asylum – extradition (grounds for refusal) – fair trial – family life (separation of family) – ill-treatment Links: French only Translations: not available	was arrested. Ecuador requested his extradition from Lebanon, which was granted. In the course of his surrender from Lebanon Ecuador, while transitting through France, the applicant reiterated his request for asylum pending in Spain and, on the basis of the Dublin Convention, he was transferred to Spain for the purposes of continuation of the asylum proceedings. When his asylum request was denied in Spain, Ecuador requested that Spain continues in the extradition proceedings that were interrupted by the applicant's request for asylum (and by his departure to Lebanon). Extradition from Spain to Ecuador was granted and the applicant was surrended to Ecuador. *Relevant complaints:* 1. The Spanish courts did not examine the merits of the extradition procedure and the circumstances in which Ecuador requested the applicant's extradition from Lebanon, thanks to a document whose translation into Arabic was distorted. The applicant also complained that his extradition had been granted by the Audiencia Nacional immediately after his asylum application had been rejected in administrative proceedings, without awaiting the outcome of his appeal against the rejection. The applicant referred to the irregularity of the proceedings instituted against him in Ecuador, the use of means of pressure on judges, incorrect translations, his unlawful detention on remand, etc., and considered that Spain became co-responsible for these facts. 2. The applicant complained under Articles 2 and 3 of the Convention that his extradition would place him at risk of ill-treatment. The domestic courts failed to examine the merits of the extradition and ignored his allegations and documents provided by him in the context of his application for asylum. 3. Relying on Article 8 of the Convention, the applicant complained of the failure of the Spanish authorities to take account of the fact that his wife was of Spanish nationality and resident in Spain. He also noted that he had lived in Spain for two years, a fact which was known to Ecuador, who nevertheless took advantage of a short passage of a few hours by the applicant in Lebanon to request his extradition. *Court's conclusions:* 1. The right not to be extradited is not, as such, included among the rights and freedoms recognized in the Convention and its additional protocols. Extradition procedure does not challenge the applicant's civil rights and obligations or the merits of a criminal charge against him within the meaning of Article 6 of the Convention. Extradition procedure followed in Lebanon is even more outside the scope of the Convetion and its form and reasonings could not be examined by Spanish courts. As regards the applicant's complaints relating to the asylum procedure initiated by the Spanish authorities and domestic courts, the Court reiterates that neither the Convention nor its Protocols

	devote the right to political asylum. Insofar as the applicant complains of the fairness of the proceedings which are now taking place in Ecuador against him after his return, the Court notes that this complaint falls outside its jurisdiction *ratione loci*, since Ecuador is not a State party to the Convention. It is, on the other hand, a State party to the American Convention on Human Rights, which guarantees the rights which the applicant invokes before the Court. Events or proceedings which may take place in Ecuador following the applicant's extradition are not the liability of Spain. *[para. 1]* 2. The Court notes that circumstances such as imposition of death sentence and, consequently, the applicant's placement on a "death row" are not met. It also notes that the applicant himself claimed that the mere submission of his application to the European Court of Human Rights helped to ensure his own security in the penitentiary establishment where he has been in Ecuador since his return, because the provisional measure adopted by the Court received widespread attention and various Ecuadorian institutions and organizations, as well as the President of the Republic of Ecuador, were forced to to guarantee before the Court that the applicant's rights would be respected in Ecuador. As his right to life and the prohibition of torture and inhuman and degrading treatment are respected, the applicant now submits to the Court various complaints relating to his provisional deprivation of liberty, which would have exceeded the maximum periods established by Ecuadorian law. In this regard, the Court observes, in any event, that Ecuador is a party to the American Convention on Human Rights. Ecuador also recognized the jurisdiction of the Inter-American Court of Human Rights. *[para. 2]* 3. The applicant had arrived in Spain in August 1998 at the age of thirty-eight. Since 1997 he had lived in Ecuador with his companion, a Spanish national whom he married on 18 January 2001, while Lebanon had already granted the applicant's extradition to Ecuador. The extradition was later interrupted in Spain, where he was domiciled shortly before the extradition decision. In the light of the foregoing, the Court considers that only the applicant's current situation of temporary imprisonment will make it more difficult, in practice, for the development of family life in Ecuador, the country of which the applicant is a national, with his present wife, who was domiciled there, and of which both the latter and the applicant speak the language. *[para. 3]*
Aronica v. Germany No.: 72032/01 Type: Decision Date: 18 April 2002	*Circumstances:* Extradition from Germany to Italy for the purposes of enforcement of a sentence *Relevant complaints:* 1. German authorities refuse to take adequate measures to protect the applicant's life since his detention and the envisaged extradition to Italy placed him at a very serious risk of suicide.

Articles: N: 2, 3, 6§1, 8 Keywords: – extradition (grounds for refusal) – fair trial – family life (separation of family) – ill-treatment Links: English only Translations: not available	2. Extradition would lead to separation of the applicant from his family with which he has lived in Germany for seven years. *Court's conclusions:* 1. There is no indication that the German authorities have disregarded the applicant's physical and mental condition, or failed to provide necessary medical care. The Court also notes that in the present case the extradition is to a State Party to the Convention. *[para. 1]* 2. Although the applicant's removal from Germany would involve considerable hardship, the Court considers, taking into account the margin of appreciation left to the Contracting States in such circumstances that the decision to extradite the applicant was not disproportionate to the legitimate aims pursued. *[para. 2]*
Raf v. Spain No.: 53652/00 Type: Judgment. Date: 17 June 2003 Articles: N: 5 Keywords: – custody (length) – extradition (custody) – extradition (postponement) Links: French only Translations: not available	*Circumstances:* Extradition from Spain to France. The applicant was originally arrested for the purposes of criminal proceedings against him in Spain. His extradition was granted while serving a sentence of imprisonment in Spain and in January 2001, Spanish authorities granted his temporary surrender to France. *Relevant complaint:* The applicant complained of the length of his detention for extradition. He was arrested on 11 April 1997 for the purposes of criminal proceedings in Spain (in the context of which his release from custody was ordered on 13 April 1999) and on 16 December 1999 (the date on which his application was lodged) he was still deprived of his liberty pending his extradition to France. The Spanish judicial bodies did not respect the time-limits laid down in the Code of Criminal Procedure and the Passive Extradition Act, even though he had complied with all the legal deadlines. He also complained that he was surrendered to French authorities only on 14 February 2001. *Court's conclusions:* The applicant was released from custody on 13 April 1999, as the maximum period for pre-trial detention in criminal proceedings in Spain has expired. However, he remained in extradition custody. On 19 May 1999 the Audiencia Provincial de Málaga sentenced the applicant to eight years' imprisonment and, in the meantime, by a decision of 23 October 1998, the Criminal Division of the Audiencia Nacional had authorized his extradition. On 19 February 1999, the Committee of Ministers granted extradition. In these circumstances, the Court notes that from 11 April 1997 to 13 April 1999 the applicant was detained not only in respect of the extradition judge but also under the conditions laid down in paragraph 1(c) of Article 5 of the Convention, as he was suspected of having committed certain offenses for which he was prosecuted before the Spanish courts. From 13 April 1999 to 19 May 1999, the date of his conviction, the applicant was detained solely for the purposes of extradition under the conditions provided for in Article 5§1(f) of the Convention. After 19 May 1999, the date of his

	conviction by the Audiencia Provincial de Málaga, the applicant was detained under the conditions provided for in Article 5§1(a), i.e. "after conviction by a competent court". On 16 January 2001, when the applicant was serving his prison sentence, the Audiencia Nacional decided to hand him over temporarily to the French authorities. Accordingly, as from 16 January 2001, the applicant was in custody for the puroposes of extradition, under the conditions laid down in Article 5§1(f) of the Convention, until he was handed over to the French authorities on 14 February 2001. Insofar as the applicant complains that he was not handed over to the French authorities directly after the decision of the Council of Ministers of 19 February 1999 on his extradition, the Court notes that in Spanish law an extradition decision can be enforced only with the prior consent of the courts in which criminal proceedings have been instituted against the person concerned in Spain or after he has served the penalties to which he has already been sentenced in Spain. Therefore, the applicant's detention has always been covered by one of the exceptions provided for in Article 5§1 of the Convention. With regard to the applicant's complaint that the length of his detention on the basis of extradition had been excessive, the Court reiterates that Article 5§3 refers only to paragraph 1(c) of Article 5. The applicant was in custody for the purposes of extradition, under the conditions provided for in Article 5§1(f) of the Convention, for two periods: one month and six days in 1999 and 28 days in 2001. These periods cannot be regarded as unreasonable. *[paras. 55 through 61, 62, 64 and 65]*
Mamatkulov and Askarov v. Turkey Nos.: 46827/99 & 46951/99 Type: Judgment [GC] Date: 4 February 2005 Articles: Y: 34; N: 3, 6§1 Keywords: – assurances – asylum – extradition (grounds for refusal) – fair trial – ill-treatment – interim measure Links: English, French	*Circumstances:* Extradition from Turkey to Uzbekistan. Interim measure not complied with. *Relevant complaints:* 1. The applicants' return to Uzbekistan would result in their being subjected to treatment proscribed by Article 3 of the Convention by reason of the poor conditions and use of torture in Uzbek prisons. In support of their allegations, they referred to reports by "international investigative bodies" in the human rights field denouncing both an administrative practice of torture and other forms of ill-treatment of political dissidents, and the Uzbek regime's repressive policy towards dissidents. 2. The applicants had not had a fair hearing in the criminal court that had ruled on the request for their extradition, in that they had been unable to gain access to all the material in the case file or to put forward their arguments concerning the characterization of the offences they were alleged to have committed. 3. The applicants had no prospect of receiving a fair trial in Uzbekistan and faced a real risk of being sentenced to death and executed. Uzbek judicial authorities were not independent of the executive. The applicants had been held incommunicado since their extradition until the start of their trial and

Translations: Albanian, Azerbaijani, Croatian, Czech, Georgian, Icelandic, Russian, Turkish Chamber Judgment: English, French (Translations: Russian, Ukrainian)	had not been permitted representation by a lawyer of their choosing. They said that the depositions on which the finding of guilt had been based had been extracted under torture. 4. By extraditing the applicants despite the interim measure indicated by the Court under Rule 39 of the Rules of Court, Turkey had failed to comply with its obligations under Article 34 of the Convention. *Court's conclusions:* 1. Reports of international human rights organizations describe the general situation in Uzbekistan but they do not support the specific allegations made by the applicants in the instant case and require corroboration by other evidence. *[paras. 72 and 73]* 2. Decisions regarding the entry, stay and expulsion of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6§1 of the Convention. Consequently, Article 6§1 of the Convention is not applicable in the instant case. *[para. 82]* 3. Like the risk of treatment proscribed by Article 2 and/or Article 3 of the Convention, the risk of a flagrant denial of justice in the country of destination must primarily be assessed by reference to the facts which the Contracting State knew or should have known when it extradited the persons concerned. *[para. 90]* 4. The obligation set out in Article 34 *in fine* requires the Contracting States to refrain also from any act or omission which, by destroying or removing the subject matter of an application, would make it pointless or otherwise prevent the Court from considering it under its normal procedure. By virtue of Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant's right of application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 of the Convention. *[paras. 102 and 128]*
Bordovskiy v. Russia No.: 49491/99 Type: Judgment Date: 8 February 2005 Articles: N: 5§1, 5§2, 5§4 Keywords: – custody (judicial review)	*Circumstances:* Extradition from Russia to Belarus. *Relevant complaints:* 1. A person should normally be arrested on the basis of a request for extradition, but nothing showed that any such request had been received by the Russian authorities before the applicant's arrest. The Belarusian detention order itself could not serve as the basis for the applicant's preliminary arrest because Belarus and Russia were independent States with their own rules of criminal procedure. 2. The law governing the extradition procedure was not sufficiently precise.

– custody (lawfulness) – custody (length) – custody (right to be informed of the reasons for arrest) – extradition (custody) Links: English only Translations: Russian	3. The applicant had not been informed about the reasons for his arrest. *Court's conclusions:* 1. The Russian General Prosecutor's Office had indeed received the Belarusian General Prosecutor's Office request for extradition on 4 August 1998, i.e. 26 days after the applicant's arrest on 9 July 1998. However, as early as 22 September 1997, that is some 9 months before the arrest, the Russian authorities had received from Belarus an international search and arrest warrant for the applicant. It follows that, pursuant to Article 61§1 of the applicable extradition treaty, the Russian authorities were under an obligation to find and arrest the applicant, which they did. Furthermore, the request for the applicant's extradition, required by Article 56 of the applicable extradition treaty, was received by the Russian General Prosecutor's Office within the 40-day time-limit established by Article 62§1 of that treaty, i.e. in time. *[para. 45]* 2. The "quality of the law" is not an end in itself and cannot be gauged in the abstract. It only becomes relevant if it is shown that the poor "quality of the law" has tangibly prejudiced the applicant's substantive Convention rights. *[para. 49]* 3. When a person is arrested on suspicion of having committed a crime, Article 5§2 of the Convention neither requires that the necessary information be given in a particular form, nor that it consists of a complete list of the charges held against the arrested person. When a person is arrested with a view to extradition, the information given may be even less complete. *[para. 56]*
Sardinas Albo v. Italy No.: 56271/00 Type: Judgment Date: 17 February 2005 Articles: Y: 5§3 Keywords: – custody (length) – extradition (custody) – extradition (postponement) Links: English only Translations: not available	*Circumstances:* Extradition of Cuban national from Italy to the United States of America. The applicant was originally arrested for the purposes of his prosecution in Italy. The United States authorities requested his extradition for offences related to drug-trafficking. His extradition was granted but postponed pending his prosecution in Italy. Meanwhile, the United States authorities submitted another request for the applicant's extradition, in relation to a charge of false statements. . His extradition for these charges was also granted and also postponed pending his prosecution in Italy. *Relevant complaint:* The applicant complained about the length of his detention on remand. *Court's conclusions:* The applicant's detention on remand was never revoked and that at no stage was his deprivation of liberty based exclusively on the orders adopted in the ambit of the extradition proceedings. Therefore, it falls within the scope of Article 5§1(c) of the Convention. The applicant was detained pending trial and extradition for little more than three years and two months, approximately ten months and a half during the investigation and the remainder after his committal for trial. Having regard to the seriousness of the charges, to the number of defendants and to the difficulties of the fight against criminal organisations dealing with international drug-trafficking – in particular with regard to obtaining

	and producing evidence –, the Court accepts that the applicant's case, as submitted by the Government, was one of a certain complexity. It follows that the length of the preliminary investigations is not, as such, open to criticism. *[paras. 68, 69 and 95]*
Shamayev and others v. Georgia and Russia No.: 36378/02 Type: Judgment Date: 14 April 2005 Articles: Y: 3, 5§2, 5§4, 13, 34, 38§1(a); N: 2, 3, 5§1 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – death penalty – extradition (custody) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English, French Translations: Azerbaijani, Georgian, Ukrainian	*Circumstances:* Extradition of 13 Russian and Georgian nationals of Chechen and Kist origin from Georgia to Russia. Interim measure not complied with in relation to 5 of the applicants. *Relevant complaints:* 1. The applicants considered that the Georgian authorities had exposed the extradited applicants to the risks of imposition of the death penalty, extra-judicial execution and ill-treatment in Russia in breach of the requirements resulting from Articles 2 and 3 of the Convention. Were the other applicants to be handed over to the Russian authorities, they would be exposed to the same fate. They pointed out that the CPT itself had stated in one of its statements that Russia was failing to respect the assurances that it had signed. They alleged that the moratorium on death penalty in Russia had no binding legal basis. Furthermore, they made allegations of systematic ill-treatment of males of Chechen origin by representatives of the Russian authorities. 2. The applicants were not informed either during their transfer to prison or subsequently that they had been arrested with a view to being handed over to the Russian authorities. The applicants had thus been deprived of the possibility of challenging the lawfulness of that custody. 3. The extradited applicants learned of their extradition before being driven to the airport. As the extradition orders had not been served on them, they had been deprived of the possibility of bringing their complaints under Articles 2 and 3 of the Convention before a court. In addition, the extradition orders were not served on the applicants' lawyers before the domestic courts. *Court's conclusions:* 1. Proof of ill-treatment may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un-rebutted presumptions of fact. In assessing the credibility of the assurances provided by Russia, it is important that they were issued by the Procurator-General, who, within the Russian system, supervises the activities of all Russian prosecutors, who, in turn, argue the prosecution case before the courts. The prosecution authorities also fulfil a supervisory role in respect of the rights of prisoners in Russia, and that this role includes the right to visit and supervise places of custody without hindrance. The applicants' representatives, in alleging the existence of a risk to the applicants in Russia, have also failed to submit sufficient information as to the objective likelihood of the personal risk run by their clients as a result of extradition. In the absence of other specific information, the evidence submitted to the Court by the applicants' representatives

	concerning the general context of the conflict in the Chechen Republic does not establish that the applicants' personal situation was likely to expose them to the risk of treatment contrary to Article 3 of the Convention. A mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Article 3 of the Convention, especially as the Georgian authorities had obtained assurances from Russia against that possibility. Even if, in view of the extreme violence which characterizes the conflict in the Chechen Republic, the Court cannot rule out that extradition may well have made the applicants entertain the fear of a certain risk to their lives, the mere possibility of such a risk cannot in itself entail a violation of Article 2 of the Convention. *[paras. 338, 344, 350, 352 and 371]* 2. The applicants' pre-trial custody and custody pending the extradition proceedings had partly overlapped but the fact that proceedings were conducted concurrently cannot in itself warrant the conclusion that there was abuse, for purposes relating to national law, of the extradition procedure. In the context of extradition, the Georgian law gives direct legal force to a foreign detention order, and there is no mandatory requirement for a domestic decision to commit the individual to custody with a view to extradition. If, after three months, the order has not been extended by the requesting State, the individual whose extradition is sought must be released. The Court therefore notes that, during the period in issue, the applicants' detention was always governed by the exceptions set out in Article 5§1(c) and (f) of the Convention and that it was not unlawful in view of the legal safeguards provided by the Georgian system. However, the applicants did not receive sufficient information (about the fact that they are in custody pending extradition) for the purposes of Article 5§2 of the Convention. *[paras. 400, 401, 402, 406 and 426]* 3. Only the prison governor and three other employees of the prison administration were aware of the surrender (extradition) which was being prepared. In the Court's opinion, such an enforcement procedure cannot be regarded as transparent and hardly demonstrates that the competent authorities took steps to protect the applicants' right to be informed of the extradition measure against them. In order to challenge an extradition order, the applicants or their lawyers would have had to have sufficient information, served officially and in good time by the competent authorities. Accordingly, the Government do not have grounds for criticising the applicants' lawyers for failing to lodge an appeal against a measure whose existence they learned of only through a leak from inside the State administration. The Court finds it unacceptable for a person to learn that he is to be extradited only moments before being taken to the airport, when his reason for fleeing the receiving country has been his fear of treatment contrary to Article 2 or Article 3 of the Convention. Neither the applicants extradited nor their lawyers were informed of the extradition orders issued in respect of the

	applicants, and the competent authorities unjustifiably hindered the exercise of the right of appeal that might have been available to them, at least theoretically. *[paras. 453, 454, 458, 460 and 461]*
Müslim v. Turkey No.: 53566/99 Type: Judgment Date: 26 April 2005 Articles: N: 3 Keywords: – expulsion – ill-treatment Links: French only Translations: Croatian	*Circumstances:* Risk of expulsion of an Iraqi national of Turkmen origin from Turkey to Iraq, where the applicant was prosecuted for involvement of an attempted murder of a politician, following failed applications for asylum. *Relevant complaint:* The applicant would incur a risk of ill-treatment and his life would be endangered, if expelled to Iraq, where security conditions remain very poor for the Turkmen even after the fall of Saddam Hussein's regime. *Court's conclusions:* The evidence before the Court as to the history of the applicant and the general context in Iraq do not establish that his personal situation would be worse than other members of the Turkmen minority, or of the other inhabitants of northern Iraq, region that seems less affected by violence than other parts of the country. *[para. 68]*
Öcalan v. Turkey No.: 46221/99 Type: Judgment [GC] Date: 12 May 2005 Articles: Y: 3, 5§3, 5§4, 6§1, 6§3(b)(c); N: 2, 5§1, 14, 34 Keywords: – custody (judicial review) – custody (lawfulness) – death penalty – expulsion – extradition (custody) – fair trial – relation between extradition and deportation or expulsion Links: English, French Translations: Azerbaijani, Croatian, Icelandic, Turkish	*Circumstances:* Expulsion or "atypical extradition" of a Kurd activist from Kenya to Turkey. *Relevant complaint:* The applicant complained that he had been deprived of his liberty unlawfully, without the applicable extradition procedure being followed (instead, he been de facto abducted by the Turkish authorities operating abroad, beyond their jurisdiction). *Court's conclusions:* An arrest made by the authorities of one State on the territory of another State, without the consent of the latter, affects the arrested person's individual rights to security under Article 5§1 of the Convention. The Convention does not prevent cooperation between States, within the framework of extradition treaties or in matters of deportation, for the purpose of bringing fugitive offenders to justice, provided that it does not interfere with any specific rights recognised in the Convention. The fact that a fugitive has been handed over as a result of cooperation between States does not in itself make the arrest unlawful and does not therefore give rise to any problem under Article 5 of the Convention. Subject to it being the result of cooperation between the States concerned and provided that the legal basis for the order for the fugitive's arrest is an arrest warrant issued by the authorities of the fugitive's State of origin, even an atypical extradition cannot as such be regarded as being contrary to the Convention. *[paras. 85, 86, 87 and 89]*

Chamber Judgment: English, French (Translations: Albanian, Armenian, Russian)	
N. v. Finland No.: 38885/02 Type: Judgment Date: 26 July 2005 Articles: Y: 3 Keywords: – asylum – expulsion – family life (separation of family) – ill-treatment Links: English only Translations: Croatian, Icelandic	*Circumstances:* Expulsion from Finland to the Democratic Republic of Congo (DRC) following failed applications for asylum and conviction for petty offences in Finland. Interim measure complied with. *Relevant complaint:* The applicant maintained that he had a well-founded fear of persecution in the DRC because of his having worked in the special force in charge of protecting former President Mobutu (DSP), his being of the same Ngbandi ethnicity as the former President and because of his close connections with the former President's family. According to credible and objective human rights reports, corruption and abuse of power remained rampant in the DRC which had to be considered a dictatorship. Should the Congolese authorities discover that a deportee had a political or military profile, or had sought asylum abroad owing to such a background, he or she could be at risk of arbitrary detention and ill-treatment. *Court's conclusions:* Decisive regard must be had to the applicant's specific activities in the DSP, on account of which he would still run a substantial risk of treatment contrary to Article 3 of the Convention, if expelled to the DRC. The risk of ill-treatment might not necessarily emanate from the current authorities of the DRC but from relatives of dissidents who may seek revenge on the applicant for his past activities in the service of President Mobutu. Neither can it be excluded that the publicity surrounding the applicant's asylum claim and appeals in Finland might engender feelings of revenge in relatives of dissidents possibly affected by the applicant's actions in the service of President Mobutu. As the protection which is therefore to be afforded to the applicant under Article 3 of the Convention is absolute the above finding is not invalidated either by the nature of his work in the DSP or by his minor offences in Finland. *[paras. 162, 163 and 166]*
Aoulmi v. France No.: 50278/99 Type: Judgment Date: 17 January 2006 Articles: Y: 34; N: 3, 8 Keywords: – expulsion	*Circumstances:* Expulsion from France to Algeria following a conviction for criminal offences in France. Interim measure not complied with. *Relevant complaints:* 1. Expulsion to Algeria would expose the applicant to ill-treatment because the treatment required by his hepatitis is not available in Algeria, where he does not have social security, and because his father was a harki[8], for which he fears reprisals from Islamists.

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

– family life (separation of family) – ill-treatment – interim measure Links: English, French Translations: Icelandic, Ukrainian	2. Expulsion to Algeria is contrary to Article 8 of the Convention because his whole family, his daughter, parents, siblings and aunts and uncles live in France. He has no family ties to Algeria where he never returned in 39 years since he left the country, aged four. *Court's conclusions:* 1. Because of the non-compliance with the interim measure, the Court was not able to examine the applicant's complaint properly. *[para. 110]* 2. Despite the intensity of the applicant's personal ties with France, the ban from French territory, in light of his conduct and the seriousness of the charges, was ultimately necessary for the defence of order and the prevention of crime. *[para. 90, French only]*
Oleacha Cahuas v. Spain No.: 24668/03 Type: Judgment Date: 10 August 2006 Articles: Y: 34; N: 3, 5, 6§1 Keywords: – assurances – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – ill-treatment – interim measure Links: English (extracts), French Translations: Spanish, Ukrainian	*Circumstances:* Extradition of a Peruvian national from Spain to Peru for the purposes of prosecution on terrorism charges (the applicant was a suspected member of the Shining Path). The applicant originally consented to simplified extradition but later retracted this consent. Interim measure not complied with. *Relevant complaints:* 1. The applicant was in serious danger of being ill-treated once he arrived in Peru. The applicant disputed the Government's assertion that he had been hospitalized upon his arrival in Peru. Furthermore, the medicines he took regularly and which he had brought back from Spain were confiscated during the flight. As to the reliability of the guarantees provided by the Peruvian Government, the applicant considered that before granting the extradition, the Spanish authorities had not sufficiently verified that he would not be subjected to treatment contrary to Convention. In this connection, several factors should have led them to carry out such verification, such as the conditions of detention in that country and the previous refusal to extradite him to Peru by the United Kingdom. Furthermore, the authorities did not ensure that the applicant had access to his medicines throughout the journey. 2. The applicant's arrest in Spain for the purposes of his extradition to Peru was contrary to Articles 5 and 6 of the Convention. He also complained that his trial had taken place in Peru before his arrival in that country and that his extradition would be part of a campaign by the ruling political party to improve its image in Peru. In the applicant's view, the outcome of the trial was already decided before the judgment. Peru, a non-member State of the Council of Europe, is outside the control of the Convention and considered that before granting his extradition, Spain should have investigated further the conditions which awaited him in Peru. In the applicant's view, there were sufficient factors which might have led the Spanish authorities to doubt the guarantees offered by their Peruvian

	counterparts (especially the publicity that the case received in Peru, which deprived it of the character of a strictly judicial trial by conferring on it a more political nature). 3. Lastly, the applicant complained under Article 34 of the Convention, since failure to comply with the interim measure precluded the Court from effectively examining his application. *Court's conclusions:* 1. The applicant was extradited following the obtaining of guarantees from the Peruvian Government. These guarantees indicated that, according to the applicable legislation, the offense charged by the applicant was not punishable by death and the Peruvian authorities undertook not to sentence the applicant to life imprisonment but to the next lower one. Furthermore, the guarantees implied that the applicant would be subject to international standards for the protection of fundamental rights, including the control exercised by the Inter-American Court of Human Rights. In the light of the information which it has obtained in the course of the proceedings before it, including in particular information subsequent to the date of extradition to Peru on 7 August 2003, the Court concludes that, there is insufficient evidence in the present case of the existence of a risk of treatment contrary to Article 3 of the Convention. *[paras. 43 and 44]* 2. It is indisputable that extradition proceedings were pending against the applicant when he was placed in extradition custody (the applicant's renunciation of the simplified extradition had no impact on the regularity of the procedure). Furthermore, the Spanish courts verified and established the regularity of the procedure under the applicable domestic law. Consequently, to the extent that the applicant's entire period of detention was covered by the exception provided for in Article 5§1(f) of the Convention, there was no violation of that provision of the Convention. Although, in the light of the evidence available, there might have been, at the time of the applican't extradition to Peru, some doubts as to the fairness of the trial which was to be commenced, there is insufficient evidence to show that the possible shortcomings of the trial could constitute a "flagrant denial of justice" within the meaning of Article 6 of the Convention and the Court's case law (the Soering v. United Kingdom judgment). *[paras. 58 and 61]* 3. The Court points out that the Government justified the failure to comply with the interim measure on the ground that it had not had sufficient time to suspend extradition. In this connection, it must be noted that, after receiving the decision to apply the interim measure for the suspension of extradition, the Government transmitted this request to the competent judge and then returned the latter's negative reply to the Court. The necessary time would not have been longer if the Government, as an internal authority, had ordered the suspension of extradition pursuant to the measure decided by the Court.

	Accordingly, the justification given for the non-application of the measure can not be upheld. On the other hand, it appears from the documents provided by the parties in the present case that the applicant, after having been extradited in breach of the interim measure, was imprisoned in a Peruvian penal institution and was subsequently released on probation three months later, and that he was in constant contact with his counsel in London. Consequently, it can not be concluded that there is an obstacle to the applicant's right to an effective remedy. However, an interim measure is by its very nature provisional and that its necessity is assessed at a precise moment because of the existence of a risk. If the Contracting Party observes the decision to apply the interim measure, the risk is avoided and any potential impediment to the right of an applicant is eliminated. On the contrary, if the Contracting Party fails to comply with the interim measure, the risk of obstructing the effective exercise of the right of the applicant remains, and it is the facts subsequent to the Court's decision and the non-application of the interim measure by the government that will determine whether the risk has come true or has not been confirmed. Even in the latter case, the force of the interim measure must be deemed compulsory. The decision of the State to comply with the interim measure cannot be postponed pending confirmation of the existence of a risk. The mere failure to comply with an interim measure ordered by the Court on account of the existence of a risk is in itself a serious obstacle to the effective exercise of the right of the applicant at that particular moment. *[paras. 70. 79 and 81]*
Salem v. Portugal No.: 26844/04 Type: Decision Date: 9 May 2006 Articles: N : 2, 3, 6 Keywords: – assurances – death penalty – extradition (grounds for refusal) – extradition (rule of speciality) – fair trial – ill-treatment – life sentence – rule of speciality	*Circumstances:* Extradition of an Indian national from Portugal to India for the purposes of prosecution on charges relating to terrorism. *Relevant complaints:* 1. The offenses for which the applicant is being prosecuted are likely to result in imposition of death penalty or life imprisonment. The assurances offered by the Government of India were inadequate. 2. The applicant may be subjected to treatment contrary to Article 3 of the Convention by the police authorities. There is a real risk that there is a lack of effective protection by these authorities against the threat of being subjected to inhuman or degrading treatment by Hindu extremist groups on account of his membership in the Muslim community. 3. The nature of the offense charged, the applicant's religion and the intense media pressure surrounding him are such that his extradition will manifestly violate the fairness of his trial. *Court's conclusions*: 1. The Portuguese courts found that the combined provisions of Article 34-C of the Indian Extradition Law and the Indian Code of Criminal Procedure provide that any death sentence shall automatically

Links: French only Translations: not available	be commuted to life imprisonment when the person is extradited from a State which does not provide for the death penalty in its legal system. In the absence of any evidence to the contrary, the Court can not overturn those findings by the domestic courts, which have had the benefit of hearing the parties directly in an examination of the extradition request. The Court further notes that the Indian authorities have provided assurances that the applicant would not be subjected to either the death penalty or to imprisonment for more than 25 years. The Portuguese courts considered these assurances to be sufficient and convincing. They noted, in particular, that the assurances in question had been given by the Indian Deputy Prime Minister, who was also in charge of internal affairs, and that they engaged the executive power. Even if the Indian courts could, as independent courts, sentence the applicant to a heavier penalty, the executive should in such a case make use of its power of pardon and commute the sentence to less than the 25 years. Such assurances excluded any danger of the applicant's conviction for capital punishment or imprisonment for life. To the extent that the applicant has alleged that the Indian authorities are prosecuting him for offenses not listed in the extradition request, in breach of the principle of specialty, the Court emphasizes that the good faith of the Portuguese Government cannot be called into question as regards respect for international law by India, which cannot be considered to be a State not governed by the rule of law. *[page 7]* *2.* There is no evidence to support the contention that the applicant would be liable to be subjected to such acts by police authorities or private groups. The applicant is prosecuted for his alleged criminal acts and not because of his religion or ethnic origin. The domestic courts have carefully examined the complaints raised by the applicant in this respect and concluded, after hearing the applicant and the numerous witnesses indicated by the parties, that there was no danger of treatment contrary to Article 3 of the Convention. *[page 8]* 3. The Court does not rule out that the fact of being tried in such circumstances may be capable of raising a question under Article 6§1 of the Convention. It points out, however, that, in the case of extradition, the applicant is required to demonstrate the "flagrant" nature of the denial of justice to which he is afraid to be exposed. In light of the relevant Indian procedural rules, there are no substantial and well-founded reasons to believe that his trial would be conducted in conditions contrary to the requirements of Article 6 of the Convention. *[page 8]*
Al-Moayad v. Germany No.: 35865/03 Type: Decision Date: 20 February 2007	*Circumstances:* Extradition from Germany to the United States of America for the purposes of prosecution on charges of supporting and financing terrorism. The applicant had been lured to travel from Yemen to Germany by an undercover agent working for the United States. *Relevant complaints:*

Article: N: 3, 5§1, 6§1, 34 Keywords: – assurances – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – ill-treatment – interim measure Links: English only Translations: German	1. Extradition to the United States violated Article 3 of the Convention because, like other terrorist suspects, the applicant would be subjected to interrogation methods amounting to torture at the hands of the United States authorities. 2. Custody pending extradition had been unlawful, as the applicant's placement under surveillance in and abduction from Yemen had breached public international law. For the same reasons he argued that the extradition proceedings in Germany had not been fair and therefore breached Article 6§1 of the Convention. 3. In the United States of America the applicant would be placed in detention indefinitely without access to a court or a lawyer and therefore risked suffering a flagrant denial of a fair trial, contrary to Article 6§1 of the Convention. 4. German authorities had violated Article 34, second sentence, of the Convention, as they had extradited him to the United States of America despite being notified by his lawyer that he had lodged an application and a Rule 39 request with the Court. *Court's conclusions:* 1. Reports about the interrogation methods used by the United States authorities on persons suspected of involvement in international terrorism concern prisoners detained by the United States authorities outside the United States territory, notably in Guantánamo Bay (Cuba), Bagram (Afghanistan) and some other third countries. German authorities have obtained an assurance from the United States (in the form of a diplomatic note from the United States Embassy), which is binding under public international law, that the applicant will not be transferred to one of the detention facilities outside the United States in respect of which interrogation methods at variance with the standards of Article 3 have been reported; furthermore, German authorities sent a representative to observe the proceedings against the applicant in the United States. In the absence of reports denouncing the ill-treatment of terrorist suspects detained in regular detention facilities within the United States, the applicant has failed to substantiate that he faced a real risk of being subjected to treatment contrary to Article 3 of the Convention during interrogation in custody in an ordinary United States prison. In the circumstances of the present case the assurance obtained by the German Government was such as to avert the risk of the applicant being subjected to interrogation methods contrary to Article 3 of the Convention following his extradition. *[paras. 66 through 71]* 2. It was not the respondent State itself – or persons for whose actions it must be deemed responsible – which had taken extraterritorial measures on Yemen's territory aimed at inciting the applicant to leave that country. The present case does not concern the use of force, which could give rise to an

	issue under Article 5§1 of the Convention; instead, the applicant was tricked by the United States authorities into travelling to Germany. The cooperation between German and United States authorities on German territory pursuant to the rules governing mutual legal assistance in arresting and detaining the applicant do not in itself give rise to any problem under Article 5 of the Convention. Extradition proceedings do not concern a dispute over an applicant's civil rights and obligations; the words "determination ... of a criminal charge" in Article 6§1 of the Convention relate to the full process of examining an individual's guilt or innocence in respect of a criminal offence, and not merely, as is the case in extradition proceedings; therefore, Article 6 of the Convention is not applicable to extradition proceedings. *[paras. 87, 88 and 93]* 3. Even the legitimate aim of protecting the community as a whole from serious threats it faces by international terrorism cannot justify measures which extinguish the very essence of a fair trial as guaranteed by Article 6 of the Convention. A flagrant denial of a fair trial undoubtedly occurs where a person is detained because of suspicions that he has been planning or has committed a criminal offence without having any access to an independent and impartial tribunal to have the legality of his or her detention reviewed and, if the suspicions do not prove to be well-founded, to obtain release. A deliberate and systematic refusal of access to a lawyer to defend oneself, especially when the person concerned is detained in a foreign country, must be considered to amount to a flagrant denial of a fair trial. In the circumstances of the present case the assurance obtained by the German Government (see above sub 1) was such as to avert the risk of a flagrant denial of a fair trial following the applicant's extradition. *[para. 101]* 4. A faxed copy of the application which the applicant's lawyer had intended to send did not reach the German Ministry of Justice. Accordingly the Court cannot consider it established that the Ministry was duly informed that a request under Rule 39 had already been made. The Government stressed that, in accordance with their constant practice – a practice which the Court can confirm – they would have ordered a provisional stay of the applicant's extradition if the Court itself had asked them to await its decision on the applicant's Rule 39 request. *[para. 126]*
Collins and Akaziebie v. Sweden No.: 23944/05 Type: Decision Date: 8 March 2007 Articles: N: 3 Keywords:	*Circumstances:* Expulsion from Sweden to Nigeria following failed application for asylum. *Relevant complaint:* If expelled to Nigeria, there was a real risk that the applicants would be subjected to female genital mutilation (FGM). 80-90% of all women had been subjected to FGM in Delta State and that despite the existing legislation in Nigeria banning the practice, the tradition lived on as a result of strong social pressure.

– asylum – expulsion – ill-treatment Links: English, French Translations: Russian	*Court's conclusions:* The Court observes that although there are indications that the FGM rate is more prevalent in the south, where Delta State is situated, the alleged rate differs significantly from the background information provided by various institutions, NGOs and the Nigeria Demographic and Health Survey as to the FGM rate for the whole country in 2005, which amounted to approximately 19%, a figure that has declined steadily in the past 15 years. The applicant did not choose to go to another State within Nigeria or to a neighbouring country, in which she could still have received help and support from the father of the child and her own family; instead, she managed to obtain the necessary practical and financial means and accordingly succeeded in travelling from Nigeria to Sweden and applying for asylum; viewed in this light, it is difficult to see why the first applicant, having shown such a considerable amount of strength and independence, cannot protect the second applicant from being subjected to FGM, if not in Delta State, then at least in one of the other states in Nigeria where FGM is prohibited by law and/or less widespread than in Delta State**.** The fact that the applicants' circumstances in Nigeria would be less favourable than in Sweden cannot be regarded as decisive from the point of view of Article 3 of the Convention. *[pages 12, 13 and 14]*
Sultani v. France No.: 45223/05 Type: Judgment Date: 20 September 2007 Articles: N: 3, 4 (Prot. 4) Keywords: – asylum – expulsion – ill-treatment Links: English (extracts), French Translations: Armenian, Azerbaijani, Bosnian, Georgian, Macedonian, Romanian, Russian, Turkish, Ukrainian	*Circumstances:* Expulsion from France to Afghanistan following failed application for asylum. *Relevant complaint:* Expulsion to Afghanistan would expose the applicant to inhuman and degrading treatment. The hostility of the authorities in his home province, based both on political and ethnic reasons, forced him to flee Afghanistan to save his life. *Court's conclusions:* The Court emphasized, in particular, that the applicant is not himself a former Communist Party leader, but only the son of one of these and that it was not established to what extent he could be personally at risk of repression in Afghanistan. *[para. 67]*
Nasrulloyev v. Russia No.: 656/06 Type: Judgment Date: 11 October 2007	*Circumstances:* Extradition from Russia to Tajikistan for the purposes of prosecution. Interim measure complied with. *Relevant complaints:*

Articles: Y: 5§1(f), 5§4 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	1. From 13 to 21 August 2003 the applicant had been detained without any judicial decision, the term of his detention had exceeded the maximum eighteen-month period under Russian law, and the criminal-law provisions governing detention with a view to extradition did not meet the requirements of clarity and foreseeability. 2. His detention had continued automatically, without any judicial decision or review. *Court's conclusions:* 1. Article 5§1(f) of the Convention does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. Having regard to the inconsistent and mutually exclusive positions of the domestic authorities on the issue of legal regulation of detention with a view to extradition, the Court finds that the deprivation of liberty to which the applicant was subjected was not circumscribed by adequate safeguards against arbitrariness. *[paras. 69 and 70]* 2. The detainee has the right to take part in proceedings for examination of the lawfulness of detention under Russian law, make submissions to the court and plead for his or her release; there is nothing, however, in the wording of applicable provisions of Russian law to indicate that these proceedings could be taken on the initiative of the detainee, the prosecutor's application for an extension of the custodial measure being the required element for institution of such proceedings; in the instant case these proceedings were instituted only once in the three years of the applicant's detention and followed an application by a prosecutor. Russian law provided, in principle, for judicial review of complaints about alleged infringements of rights and freedoms which would presumably include the constitutional right to liberty; however, these provisions conferred standing to bring such a complaint solely on "suspects" or "defendants" or, more generally, on "parties to criminal proceedings". Under Russian criminal law, the applicant was neither a "suspect" nor a "defendant" because there was no criminal case against him in Russia. Furthermore, the Russian authorities consistently refused to recognise the applicant's position as a party to criminal proceedings on the ground that no investigation against him had been initiated in Russia. That approach obviously undermined his ability to seek judicial review of the lawfulness of his detention. *[paras. 88 and 89]*
Kafkaris v. Cyprus No.: 21906/04 Type: Judgment [GC] Date: 12 February 2008 Articles: Y: 7; N: 3, 5§1, 14	*Circumstances:* Life sentence served in Cyprus. *Relevant complaint:* The whole or a significant part of the period of the applicant's detention for life was a period of punitive detention that exceeded the reasonable and acceptable standards for the length of a period of punitive detention as required by the Convention. Under the legislative scheme currently in force in Cyprus there was no parole board system and no provision was made for the granting of parole

Keywords: – custody (lawfulness) – discrimination – life sentence Links: English, French Translations: Armenian, Azerbaijani, Georgian, Icelandic, Macedonian, Romanian, Russian, Serbian, Turkish, Ukrainian Chamber Judgment: not available (jurisdiction relinquished by the Chamber to the Grand Chamber)	to prisoners. Thus, the principal purpose of the sentence of imprisonment imposed by the Cypriot courts and subsequently enforced by the relevant authorities was punitive. The unexpected reversal of his legitimate expectations for release and his continuous detention beyond the date which had been set for his release by the prison authorities had left him in a state of distress and uncertainty over his future for a significant amount of time. In his opinion, this amounted to inhuman and degrading treatment. *Court's conclusions:* The imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention. A life sentence does not become "irreducible" by the mere fact that in practice it may be served in full. It is enough for the purposes of Article 3 of the Convention that a life sentence is de jure and de facto reducible. Existence of a system providing for consideration of the possibility of release is a factor to be taken into account when assessing the compatibility of a particular life sentence with Article 3 of the Convention. In this context, however, it should be observed that a State's choice of a specific criminal justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision the Court carries out at European level, provided that the system chosen does not contravene the principles set forth in the Convention. The President of Cyprus, with the agreement of the Attorney-General, can order by decree the conditional release of a prisoner at any time; it is clear that in Cyprus such sentences are both de jure and de facto reducible. *[paras. 97, 98, 99, 102 and 103]*
Saadi v. Italy No.: 37201/06 Type: Judgment [GC] Date: 28 February 2008 Articles: Y: 3 Keywords: – assurances – expulsion – ill-treatment Links: English, French Translations: Armenian, Azerbaijani, Georgian, Icelandic, Italian, Macedonian, Romanian, Russian, Serbian, Turkish, Ukrainian	*Circumstances:* Expulsion from Italy, following serving a sentence in Italy imposed for criminal conspiracy of terrorist character and following failed asylum application, to Tunisia where he was sentenced in absentia by a military court to 20 years of imprisonment for membership in a terrorist organization and incitement of terrorism. Interim measure complied with. At request by Italy, Tunisia provided assurances that the applicant, if expelled to Tunisia would enjoy safeguard of the relevant Tunisian laws and that the Tunisian laws in force guarantee and protect the rights of prisoners in Tunisia and secure to them the right to a fair trial and pointed out that Tunisia has voluntarily acceded to the relevant international treaties and conventions. Interim measure complied with. *Relevant complaint:* The applicant submitted that it was "a matter of common knowledge" that persons suspected of terrorist activities, in particular those connected with Islamist fundamentalism, were frequently tortured in Tunisia. The applicant's family had received a number of visits from the police and was constantly subject to threats and provocations; his sister had twice tried to kill herself because of this. A mere reminder of the treaties signed by Tunisia could not be regarded as sufficient. *Court's conclusions:* It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he

Chamber Judgment: not available (jurisdiction relinquished by the Chamber to the Grand Chamber)	would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. Where such evidence is adduced, it is for the Government to dispel any doubts about it. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances. To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department. The mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 of the Convention. Where the sources available describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence. The scale of the danger of terrorism today and the threat it presents to the community must not call into question the absolute nature of Article 3 of the Convention. The Court cannot accept that a distinction must be drawn between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole. Either the evidence adduced before the Court reveals that there is a substantial risk if the person is sent back or it does not. The prospect that he may pose a serious threat to the community if not returned does not reduce in any way the degree of risk of ill treatment that the person may be subject to on return. The visits by the International Committee of the Red Cross cannot exclude the risk of subjection to ill-treatment. The existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention. *[paras. 129, 130, 131, 137, 138, 139, 146 and 147]*
Ismoilov and others v. Russia No.: 2947/06 Type: Judgment Date: 24 April 2008 Articles: Y: 3, 5§1, 5§4, 6§2 Keywords: – asylum – custody (judicial review)	*Circumstances:* Extradition of twelve Uzbek and one Kyrgyz nationals from Russia to Uzbekistan for the purposes of prosecution for membership in a terrorist organization, supporting terrorism, attempting a violent overthrow of the constitutional order of Uzbekistan and some other offences connected with the mass disorders in Andijan in 2005. The applicants were granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaints:* 1. Torture in Uzbekistan was widespread in detention facilities and individuals charged in connection with the Andijan events were at an increased risk of ill-treatment. Uzbek authorities had given the

– custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – presumption of innocence Links: English, French Translations: Azerbaijani, Italian, Russian	same assurances in the extradition proceedings of four Uzbek nationals from Kyrgyzstan and that those assurances had proved to be ineffective. As the Uzbek authorities refused to give representatives of the international community access to the extradited individuals, it was not possible to monitor their compliance with the assurances. Uzbek authorities knew about the applicants' application for asylum and their application before the Court, which had further intensified the risk of torture. 2. The provisions of Russian law setting the maximum period of detention were not respected. 3. The applicants had been unable to obtain judicial review of their detention either in criminal, or in civil proceedings. 4. The wording of the extradition decisions violated the applicants' right to be presumed innocent. *Court's conclusions:* 1. Given that the practice of torture in Uzbekistan is described by reputable international experts as systematic, the assurances from the Uzbek authorities did not offer a reliable guarantee against the risk of ill-treatment. *[para. 127]* 2. In the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to extradition and setting up time-limits for such detention, the deprivation of liberty to which the applicants were subjected was not circumscribed by adequate safeguards against arbitrariness. *[para. 140]* 3. The applicants were caught in a vicious circle of shifted responsibility where no domestic court, whether civil or criminal, was capable of reviewing the alleged unlawfulness of their detention. Proceedings for examination of the lawfulness of custody under Russian criminal law can be initiated only by prosecutor. *[paras. 147, 149 and 151]* 4. The extradition proceedings were a direct consequence, and the concomitant, of the criminal investigation pending against the applicants in Uzbekistan. Therefore, there was a close link between the criminal proceedings in Uzbekistan and the extradition proceedings justifying the extension of the scope of the application of Article 6§2 of the Convention to the latter. The decision to extradite the applicants does not in itself offend the presumption of innocence. However, the applicants' complaint is not directed against the extradition as such, but rather against the reasoning contained in the extradition decisions. An extradition decision may raise an issue under Article 6§2 of the Convention if supporting reasoning which cannot be dissociated from the operative provisions amounts in substance to the determination of the person's guilt. *[paras. 164 and 167]*

Garabayev v. Russia No.: 38411/02 Type: Judgment Date: 7 June 2008 Articles: Y: 3, 5§1(f), 5§3, 5§4, 13 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment – nationality Links: English, French Translations: Russian	*Circumstances:* Extradition of a dual Russian and Turkmen citizen from Russia to Turkmenistan for the purposes of prosecution and his temporary surrender from Turkmenistan back to Russia for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. Russian authorities had failed to take into account information which indicated that there existed a real risk of torture and politically motivated persecution. He had been shown the extradition order only on the day of surrender to Turkmenistan, and had had no opportunity to contact his lawyer or to challenge it. 2. At the time of his arrest, the applicant had been holding Russian nationality and could not be extradited to Turkmenistan; his detention for that purpose had, therefore, been unlawful from the outset. 3. The inclusion of the applicant's name on the international wanted list by the Russian Prosecutor General's Office was unlawful because he had been extradited by the same office to Turkmenistan in October 2002 and had not absconded from justice. The Russian court, when ordering the applicant's detention in absentia, had failed to investigate the circumstances of the case. *Court's conclusions:* 1. In assessing the evidence on which to base the decision whether there has been a violation of Article 3, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un-rebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account. *[para. 76]* 2. The applicant's custody was not confirmed by a Russian court, contrary to the provisions of Russian law, which requires such authorisation unless the custody in the country seeking extradition has been ordered by a court. Therefore the applicant's custody pending extradition was not in accordance with a "procedure prescribed by law" as required by Article 5§1 of the Convention. Furthermore, the applicant's extradition was in the end found unlawful in view of his Russian nationality, as domestic legislation excludes, in non-ambiguous terms, the extradition of Russian nationals. The information about the applicant's nationality had already been available to the competent authorities at the time of the applicant's arrest because the applicant and his lawyer had raised the issue and his Russian passport had been in his extradition file. On that basis the Moscow City Court declared the applicant's custody for the purpose of extradition unlawful from the outset. The Court considers that the procedural flaw in the order authorizing the applicant's custody was so fundamental as to render

	it arbitrary and ex facie invalid. Remedies must be made available during a person's custody with a view to that person obtaining speedy judicial review of the lawfulness of the detention capable of leading, where appropriate, to his or her release. The accessibility of a remedy implies, inter alia, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy. *[paras. 88, 89 and 94]* 3. The mere possibility of a court issuing an arrest warrant in absentia in a situation where a person flees from justice, especially when he or she is placed on the international wanted list, does not conflict with the provisions of the Convention. *[para. 101]*
Shchebet v. Russia No.: 16074/07 Type: Judgment Date: 12 June 2008 Articles: Y: 3, 5§1, 5§4 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) – ill-treatment Links: English only Translations: Ukrainian	*Circumstances:* Extradition from Russia to Belarus for the purposes of prosecution. *Relevant complaints:* 1. The applicant had been detained without a judicial warrant in excess of the forty-eight-hour period established by the Russian Constitution. 2. The applicant submitted that a complaint to a court about the unlawfulness of her detention would have been ineffective because the Prosecutor General's Office had a two-fold duty of making a case for holding her in custody and ensuring respect for her rights. She further complained that she had not been taken to the hearing before the competent Russian Court. *Court's conclusions:* 1. No record of the applicant's arrest was drawn up upon her apprehension (the police officers believed that an arrest record was not required in the framework of extradition proceedings). Irrespective of whether their interpretation of the domestic law was correct or not, the absence of an arrest record must in itself be considered a most serious failing, as unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention. Similar to paragraph 4 of Article 16 of the European Convention on Extradition, Article 62 of the Minsk Convention establishes an additional guarantee against an excessive duration of provisional arrest pending receipt of a request for extradition. It does not indicate that a person may be detained for forty days but rather requires that the person should be released upon expiry of the fortieth day if the request has not been received in the meantime. In other words, even though under domestic law detention could be ordered for a period exceeding forty days, Article 62 of the Minsk Convention requires the domestic

	authorities to release anyone who has been detained for more than forty days in the absence of a request for extradition. *[paras. 63, 67 and 68]* 2. Applicable provisions of Russian law conferred standing to bring a complaint solely on "parties to criminal proceedings". The Russian authorities consistently refused to recognize the applicant's position as a party to criminal proceedings. That approach obviously negated her ability to seek judicial review of the lawfulness of her custody. *[para. 78]*
Ryabikin v. Russia No.: 8320/04 Type: Judgment Date: 19 June 2008 Articles: Y: 3, 5§1(f), 5§4 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Turkmenistan for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. Russian authorities had failed to take into account information which indicated that there existed a real risk of torture and ethnically motivated persecution in Turkmenistan. Torture and ill-treatment were widespread among detainees in Turkmenistan, and as a member of an ethnic minority the applicant would be in a particularly vulnerable situation. 2. Detention pending extradition had been unlawful because the procedure prescribed by the domestic and international legislation was not complied with. The proceedings had not been conducted with the requisite diligence and the detention was therefore arbitrary. *Court's conclusions:* 1. Evidence from a range of objective sources demonstrates that extremely poor conditions of detention, as well as ill-treatment and torture, remain a great concern for all observers of the situation in Turkmenistan. The protection afforded by Article 3 is wider than that provided by Article 33 of the 1951 Convention relating to the Status of Refugees. Even accepting that assurances were given, the reports noted that the authorities of Turkmenistan systematically refused access by international observers to the country, and in particular to places of detention. In such circumstances the Court is bound to question the value of the assurances that the applicant would not be subjected to torture, given that there appears to be no objective means of monitoring their fulfilment. If extradited to Turkmenistan, the applicant would almost certainly be detained and runs a very real risk of spending years in prison. There are sufficient grounds for believing that he would face a real risk of being subjected to treatment in violation of Article 3 of the Convention. *[paras. 116, 118, 119 and 121]* 2. The applicant remained in detention for twelve months and eighteen days. As the Government admitted in their observations and as has been stated on several occasions by the domestic authorities, the proceedings relating to his extradition were "suspended" for most of that period. While the Government referred to the interim measure indicated by the Court under Rule 39 of the Rules of

	Court, this argument cannot be employed as a justification for the indefinite detention of persons without resolving their legal status. In the present case it does not appear that the applicant's detention was in fact justified by the pending extradition proceedings, in the absence of any such decision taken to date. *[para. 132]*
Soldatenko v. Ukraine No.: 2440/07 Type: Judgment Date: 23 October 2008 Articles: Y: 3, 5§1(f), 5§4, 13 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Russian	*Circumstances:* Extradition from Ukraine to Turkmenistan for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. The lack of information about the state of the proceedings for the applicant's extradition and the means of challenging it, as well as his lack of access to the material in the case file and to legal assistance, seriously hindered the applicant's effective access to the courts. In Turkmenistan there was a practice of torturing people during investigation to extract confessions and the applicant would face a risk of appalling conditions of detention. The lack of judicial supervision of detention in Turkmenistan excluded even minimum control over observance of his rights during his detention. He would be at risk of even more cruel forms of ill-treatment because he was a Russian and not an ethnic Turkmen. Relevant international materials demonstrate that Turkmenistan constantly ignored its obligations under major human rights treaties and failed to implement recommendations of international organizations and to cooperate with their monitoring bodies. In these circumstances the applicant doubted the ability of the Turkmen authorities, on assuming the obligation to observe his rights, to supervise the implementation of these obligations by State agents. He considered that, whatever assurances the Government of Turkmenistan might present to the Government of Ukraine, they could not guarantee the observance of these assurances because of the lack of an effective system of torture prevention. 2. Prior to 30 January 2007, when the Russian General Prosecutor's Office had received the official request for the applicant's extradition, his detention had fallen within the ambit of Article 5§1(c) of the Convention. Only after that date could the detention be qualified as being "with a view to extradition". *Court's conclusions:* 1. Reports of the US State Department and of the United Nations Secretary-General equally noted very poor prison conditions, including overcrowding, poor nutrition and untreated diseases and that allegations of torture and ill-treatment are not investigated by the competent Turkmen authorities. Bearing in mind the authority and reputation of the authors of these reports, the seriousness of the investigations by means of which they were compiled, the fact that on the points in question their

	conclusions are consistent with each other and that those conclusions are corroborated in substance by other sources, the Court does not doubt their reliability. In so far as the applicant alleged that he would face a risk of treatment or punishment which is contrary to Article 3 of the Convention because of his ethnic origin, there is no evidence in the available materials that the criminal suspects of non-Turkmen origin are treated differently from the ethnic Turkmens. From the materials considered above it appears that any criminal suspect held in custody counter a serious risk of being subjected to torture or inhuman or degrading treatment both to extract confessions and to punish for being a criminal. Despite the fact that the applicant is wanted for relatively minor and not politically motivated offence, the mere fact of being detained as a criminal suspect in such a situation provides sufficient grounds for fear that he will be at serious risk of being subjected to treatment contrary to Article 3 of the Convention. It is not at all established that the First Deputy Prosecutor General of Turkmenistan or the institution which he represented was empowered to provide such assurances on behalf of the State. Given the lack of an effective system of torture prevention, it would be difficult to see whether such assurances would have been respected. The international human rights reports also showed serious problems as regards the international cooperation of the Turkmen authorities in the field of human rights and categorical denials of human rights violations despite the consistent information from both intergovernmental and nongovernmental sources. In the light of the above findings, the Court cannot agree with the Government that the assurances given in the present case would suffice to guarantee against the serious risk of ill-treatment in case of extradition. *[paras. 71, 72 and 73]* 2. The Court accepts the Government's submission that the Minsk Convention, being part of the domestic legal order, is capable of serving as a legal basis for extradition proceedings and for detention with a view to extradition. Article 5§1(f) of the Convention, however, also requires that the detention with a view to extradition should be effected "in accordance with a procedure prescribed by law". The Minsk Convention does not provide for a particular procedure to be followed in the requested State which could offer safeguards against arbitrariness. *[para. 112]*
Khudyakova v. Russia No.: 13476/04 Type: Judgment Date: 8 January 2009 Articles: Y: 5§1(f), 5§4; N: 3, 5§2, 6§2, 8, 12	*Circumstances:* Extradition from Russia to Kazakhstan for the purposes of prosecution. Extradition denied for lapse of time under Russian law. *Relevant complaints:* 1. Neither the Russian criminal-law provisions governing detention with a view to extradition, nor the 1993 Minsk Convention met the requirements of clarity and foreseeability. Thus, due to this confusion in domestic law, the applicant had been detained from 7 August to 2 September 2003

Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – custody (right to be informed of the reasons for arrest) – extradition (custody) – ill-treatment Links: English only Translations: not available	without any judicial decision and the term of her detention had far exceeded the period provided for by the domestic law and had never been lawfully extended. 2. Neither at the moment of her arrest, nor at any later stage had the applicant been informed why she had been arrested and detained. 3. The applicant complained of delays in the review of the lawfulness of her detention. She claimed, in particular, that the complaint filed by her lawyer on 15 August 2003 with the Petrozavodsk Town Court had only been examined on 2 September 2003, that is eighteen days later. *Court's conclusions:* 1. The Government's argument that the applicant and her lawyer had contributed to the prolongation of her detention and were directly responsible for the applicant's continued detention is regrettable. Shifting the responsibility for detention to the applicant when she was under the full control of the authorities is neither relevant, nor reasonable. Even assuming that the applicant's actions did protract the extradition procedure as the authorities were under obligation to examine her applications for asylum and her self-incriminating statements in respect of a crime committed in Russia, at this juncture two separate issues should be distinguished: the applicant's detention and her extradition. The question as to when the Prosecutor General was going to decide on the applicant's extradition is of no relevance to the Court for the purpose of examining the lawfulness and length of the applicant's detention. What is at stake is the applicant's right to liberty pending the decision on extradition. It should be noted that the domestic courts had a possibility to annul the measure of restraint or to change it to a more lenient one during the time the question of the applicant's extradition was under consideration. *[para. 67]* 2. Whilst this information must be conveyed 'promptly', it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features. *[para. 79]* 3. The remedies must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy. There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the

	presumption of innocence. The same logic may be applicable to detention pending extradition when the investigation is pending. *[paras. 89 and 92]*
Gasayev v. Spain No.: 48514/06 Type: Decision Date: 17 February 2009 Articles: N: 2, 3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment – life sentence Links: French only Translations: not available	*Circumstances:* Extradition of a Russian national of Chechen origin from Spain to Russia (Chechnya). *Relevant complaint:* The applicant claimed that, if extradited to Russia, he would incur a risk of ill-treatment and his life would be endangered because he was of Chechen origin. *Court's conclusions:* The Spanish Courts concluded, after an in-depth examination of the assurances provided by the Russian authorities that the applicant would not be subject to the death penalty. In the absence of any evidence to the contrary, the Court will not overturn conclusions which have been reached by domestic Courts after an adversarial assessment of a request for extradition. The Court further considers that the Spanish courts rightfully considered that the assurances provided set aside any danger that the applicant might incur an irreducible life sentence. The Court notes that the assurances according to which the applicant's prison conditions would respect the requirement set forth by Article 3 of the Convention are sufficient because they provide for an effective mechanism to monitor compliance of the Russian authorities with the content of the assurances. *[pages 6 and 7]*
Ben Khemais v. Italy No.: 246/07 Type: Judgment Date: 24 February 2009 Articles: Y: 3, 34 Keywords: – assurances – expulsion – ill-treatment – interim measure Links: French only Translations: Azerbaijani, Italian, Russian	*Circumstances:* Expulsion of a Tunisian national from Italy after serving a sentence for assault, to Tunisia where he was sentenced in absentia by a military Court to 10 years imprisonment for terrorist offences. After the applicant was expelled, Tunisia, at the request of Italy, provided assurances that the applicant would enjoy the safeguard of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure not complied with. *Relevant complaints:* 1. The applicant claimed that several Tunisian nationals expelled to Tunisia on the ground that they were suspected of terrorism had no longer shown any signs of life. Reports published by Amnesty International and the US Department of State demonstrating that torture was used in Tunisia confirmed that claim. The applicant's family was subjected to threats and provocations. The assurances provided by Tunisia are not reliable and were provided after the applicant was expelled which demonstrates that Italy accepted the risk that he might be subjected to ill-treatment. 2. The fact that the applicant was expelled on the basis of a different decision than the one referred to in the Court's interim measure is not relevant with regard to the obligations of Italy under Article 34 of the Convention. The Italian authorities cannot circumvent their duty to respect the Court's interim measures on the pretext of a new decision on expulsion and its immediate execution.

	Court's conclusions: 1. The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of ill-treatment is firmly established. The existence of a risk of ill-treatment must be assessed primarily with those facts which were known or ought to have been known to the State at the time of expulsion. The Court is not precluded, however, from having regard to information which came to light subsequently and which might be of value in confirming or refuting the appreciation made by the State of the well-foundedness of an applicant's fears. If the elements provided by Tunisian authorities may establish that the applicant was not subjected to ill-treatment during the weeks following his expulsion, there is no knowing what might happen to him in the future. *[paras. 61 through 64]* 2. Where a risk of irreparable damage is plausibly asserted, the object of the interim measure is to maintain the status quo pending the Court's determination of the case. There is clear evidence that because of his expulsion, the applicant was unable to submit all relevant arguments in his defence and that the court's judgment is likely to be deprived of its effect. The removal is a serious obstacle that might prevent Italy from honouring its obligations under Articles 1 and 46 of the Convention, to protect the applicant's rights and make reparation for the consequences of any violation found by the Court. *[paras. 81 and 87]*
Eminbeyli v. Russia No.: 42443/02 Type: Judgment Date: 26 February 2009 Articles: Y: 5§1(f), 5§4; N: 3, 5§2, 6, 13 Keywords: – asylum – custody (judicial review) – custody (lawfulness)	*Circumstances:* Extradition from Russia to Azerbaijan for the purposes of prosecution. Extradition denied on the ground of UNHCR refugee status of the applicant. *Relevant complaints:* 1. Detention had been ab initio unlawful, because he could not be expelled to Azerbaijan having been granted refugee status. 2. The report drawn up immediately after the applicant's arrest included a reference to the arrest warrant issued by a prosecutor of the Republic of Azerbaijan. No further information on the criminal charges against him and their legal characterization and factual basis, or a copy of that arrest warrant, was provided to the applicant. *Court's conclusions:*

– custody (right to be informed of the reasons for arrest) – extradition (custody) Links: English only Translations: not available	1. Having regard to the similar protection Russian law affords against expulsion both to Russian nationals and refugees, the Court does not consider that the conclusion reached in the Garabayev case is altered in the present case. The Court therefore finds that the flaw in the very act of the applicant's arrest was so fundamental as to render it arbitrary and ex facie invalid from the outset. *[para. 48]* 2. Although the Court considers it regrettable that at the time of his arrest the applicant was not served with a copy of the arrest warrant issued by the prosecutor of the Republic of Azerbaijan, the information provided to the applicant by Russian authorities was sufficient to satisfy their obligation under Article 5§2 of the Convention. In reaching this conclusion, the Court also takes into account the fact that, as it appears, shortly after the arrest the applicant was served with a translation of the arrest warrant. *[para. 57]*
O. v. Italy No.: 37257/06 Type: Judgment Date: 24 March 2009 Articles: Y: 3 Keyword: – assurances – expulsion – ill-treatment Links: French only Translations: not available	*See the summary of the very similar case of Ben Khemais v. Italy.*
Cipriani v. Italy No.: 22142/07 Type: Decision Date: 30 March 2009 Articles: N: 3, 1 (Prot. 6) Keyword: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment	*Circumstances:* Extradition of an Italian national to the USA for the purpose of prosecution. At the request of the Italian Court, the US Department of Justice provided an assurance that the applicant was not accused of a "capital felony" and, therefore, that the death penalty was not even potentially applicable in his case. *Relevant complaint:* The applicant claimed that his extradition to the USA exposed him to the risk of being sentenced to the death penalty. The assurances given by the US government did not exclude the possibility that the description of the offense he was accused of be altered to a capital felony as the extradition Treaty between the USA and Italy allowed for such an alteration. The principle of speciality enshrined in the Treaty does not prohibit the requesting State from prosecuting the extradited person when the same facts for which extradition has been granted constitute a differently denominated offense

Links: French only Translations: Italian	which is extraditable. The absence of certainty regarding the incurred sentence is not compatible with the absolute nature of the prohibition laid down by Protocol No. 6. *Court's conclusions:* The Court noted that the Italian authorities had warded off any risk of a death sentence on the grounds that the applicant was accused of crimes for which such a penalty is not incurred, that the principle of speciality included in the Treaty prohibited the alteration of the denomination of the offense into a capital felony and that the Treaty had been implemented in US law and must therefore be observed by every US Court. These elements were precise and verifiable and their interpretation by Italian authorities is neither manifestly illogical nor arbitrary. The diplomatic assurances provided by the US Department of Justice may be taken into account by the Court when assessing the existence of a real and tangible violation of Article 1 of Protocol No. 6. Nothing in the present case allows to consider that the assurances were not serious and reliable. *[pages 9 and 10]*
Stephens v. Malta (No. 1) No.: 11956/07 Type: Judgment Date: 21 April 2009 Articles: Y: 5§1; N: 5§4, 7, 13 Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) Links: English only Translations: Romanian	*Circumstances:* Extradition from Spain to Malta for the purposes of prosecution for a criminal offence committed in Spain that was supposed to have effects in Malta (conspiracy to transport drugs from Spain to Malta). *Relevant complaints:* 1. The applicant had not been "lawfully arrested" on reasonable suspicion of having committed "an offence" – the court issuing the warrant for his arrest did not have the authority to do so and the facts of which he was accused did not amount to a triable offence in Malta (as conspiracy committed outside Malta is not actionable in Malta). 2. Inaction of the Maltese authorities vis-à-vis his release in Spain after the arrest warrant had been declared invalid resulted in a further ten-day period of detention. By contacting Interpol, the Maltese authorities sent the message to the wrong address and by means of the wrong courier. At the time, before the coming into force of the European Arrest Warrant, a request for extradition was conducted through diplomatic channels, and only the Minister had the power to halt such requests. However, the AG failed to advise the Minister to withdraw the extradition on the basis of the rescinded warrant. *Court's conclusions:* 1. The reasoning of the Civil Court and the Constitutional Court both gave a full explanation of how the law was to be interpreted, making it clear that the facts of which the applicant was accused fell to be considered as an offence under Maltese law. Such interpretation has become customary in domestic practice and was further reaffirmed by the criminal courts which later convicted the applicant. Consequently, the offences of which the applicant was accused constituted a "law" of sufficient "quality" within the meaning of the Court's case-law and nothing suggests that the Maltese

	courts interpreted the relevant domestic law provisions unreasonably or in such a way as to make punishable acts which would otherwise have remained outside the scope of the relevant criminal law. Their interpretation was not therefore arbitrary so as to render the applicant's detention unlawful also under this respect. *[para. 63]* 2. Malta had accepted responsibility for the violation of Article 5§1 of the Convention for the initial period of detention irrespective of the fact that the applicant was being detained in Spain. *[para. 79]*
Sellem v. Italy No.: 12584/08 Type: Judgment Date: 5 May 2009 Articles: Y: 3 Keyword: – assurances – expulsion – ill-treatment Links: French only Translations: not available	*See the summary of the very similar case of Ben Khemais v. Italy.*
Abdolkhani and Karimnia v. Turkey (No. 1) No.: 30471/08 Type: Judgment Date: 22 September 2009 Articles: Keywords: Y: 3, 5§1, 5§2, 5§4, 13 – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – expulsion – ill-treatment Links: English, French	*Circumstances:* Expulsion from Turkey to Iraq or Iran of two persons granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaint:* The applicants' removal to Iran would expose them to a real risk of death or ill-treatment, as former members of the PMOI run the risk of being subjected to the death penalty in Iran. In Iraq, they would be subjected to ill-treatment as they are considered by Iraqi authorities to be allies of the former Saddam Hussein regime. *Court's conclusions:* Owing to the absolute character of the right guaranteed by Article 3 of the Convention, the existence of the obligation not to expel is not dependent on whether the risk of ill-treatment stems from factors which involve the responsibility, direct or indirect, of the authorities of the receiving country. Article 3 of the Convention may thus also apply in situations where the danger emanates from persons or groups of persons who are not public officials. What is relevant in this context is whether an applicant is able to obtain protection against and seek redress for the acts perpetrated against him or her. Unlike the Turkish authorities, the UNHCR interviewed the applicants and had the opportunity to test the credibility of their fears and the veracity of their account of circumstances in their country of origin. Following these interviews, it found that the applicants risked being subjected to an

Translations:Italian	arbitrary deprivation of life, detention and ill treatment in their country of origin. In the light of the above, the Court finds that there are serious reasons to believe that former or current PMOI members and sympathisers could be killed and ill-treated in Iran and that the applicants used to be affiliated to this organisation. Moreover, in the light of the UNHCR's assessment, there exist substantial grounds for accepting that the applicants risk a violation of their right under Article 3 of the Convention, on account of their individual political opinions, if returned to Iran. The indirect removal of an alien to an intermediary country does not affect the responsibility of the expelling Contracting State to ensure that he or she is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention. Given that the applicants' deportation to Iraq would be carried out in the absence of a legal framework providing adequate safeguards against risks of death or ill-treatment in Iraq and against the applicants' removal to Iran by the Iraqi authorities, the Court considers that there are substantial grounds for believing that the applicants risk a violation of their rights under Article 3 of the Convention if returned to Iraq. *[paras. 74, 82, 88 and 89]*
Dubovik v. Ukraine Nos.: 33210/07 & 41866/08 Type: Judgment Date: 15 October 2009 Articles: Y: 5§1, 5§4, 5§5 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) Links: English only Translations: Russian	*Circumstances:* Extradition from Ukraine to Belarus for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. The applicant's extradition to Belarus would expose her to a risk of torture and unfair trial, contrary to Articles 3 and 6 of the Convention. After the extradition proceedings were discontinued at the request of the Belarus authorities and the applicant was released, she submitted that the risk of her extradition to Belarus persisted and that nothing prevented the General Prosecutor's Office of Belarus from requesting her extradition again. 2. Ukrainian authorities had had no grounds for reasonable suspicion that the applicant had committed a crime – therefore, her detention prior to receipt of the extradition request had been contrary to Article 5§1(c) of the Convention. Her detention on 26 July 2007 had had no legal basis, since it had not been warranted by a judicial decision and had not been aimed at preventing or discontinuing a crime. Since the date when she received refugee status, with the exception of the period when it was suspended, none of the grounds listed in Article 5§1 of the Convention was applicable to her detention, as the domestic law prohibited removal of refugees from the territory of Ukraine. *Court's conclusions:* 1. Although the possibility of the renewal of such extradition proceedings against the applicant cannot be excluded, there is nothing to suggest that the applicant is at an imminent risk of removal from the

	Ukrainian territory or that any valid decision by the Ukrainian authorities on such removal exists at the moment. *[para. 40]* 2. Relying on its previous judgments in *Soldatenko* and *Svetlorusov*, the Court found a violation of Article 5§1 of the Convention in connection with the period of custody between 26 July 2007 and 5 March 2008. For the period of custody between 5 March 2008 and 25 February 2009, the Court notes that its interim measure concerned the applicant's removal from Ukraine, and did not require her detention. Without more, it cannot therefore provide a basis in domestic law for the applicant's custody as submitted by the Government. The Government have not explained how, if the applicant could not be removed due to her refugee status, her detention could have been "with a view to extradition" within the meaning of Article 5 as regards the period from 5 March 2008 to 18 April 2008. There has accordingly been a violation of Article 5§1 of the Convention with respect to this period of the applicant's detention too. *[paras. 55, 56, 57, 60, 61 and 62]*
Kaboulov v. Ukraine No.: 41015/04 Type: Judgment Date: 19 November 2009 Articles: Y: 3, 5§1, , 5§1(f), 5§2, 5§4, §5, 13, 34; N: 2 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – death penalty – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Russian, Ukrainian	*Circumstances:* Extradition from Ukraine to Kazakhstan for the purposes of prosecution that could result in imposition of death penalty. Interim measure complied with. *Relevant complaints:* 1. The assurances given by Kazakhstan concerning moratorium imposed on death penalty were insufficient as the moratorium could be lifted at any time and the charges against the applicant could be reclassified to carry death penalty. 2. There was a danger that the applicant would be subjected to ill-treatment on account of the possible application of the death penalty and the time spent awaiting its execution, the poor conditions of detention in Kazakhstan, the lack of proper medical treatment and assistance in detention facilities and the widespread practice of torture of detainees. 3. The applicant he had found out the real reasons for his detention, namely that he was wanted by the authorities of Kazakhstan, only after more than 20 days passed between the moment of his detention on and the time of his notification, which could not be seen as "prompt". *Court's conclusions:* 1. There is no suggestion that the moratorium on enforcement is likely to be lifted. The request for the applicant's extradition was submitted under Article 96§1 of the Criminal Code (murder) and the international search warrant issued by the authorities of Kazakhstan contained reference to aggravated murder (Article 96§2 of the Criminal Code); the Government of Kazakhstan assured that the applicant would be prosecuted only under Article 96§1 (non-aggravated murder). In the light of all the circumstances of the case, the Court concludes that, even in the unlikely event of the charges

	against the applicant being amended from "murder" to "aggravated murder", there is no real risk of his being executed, and therefore no violation of Article 2 of the Convention. *[paras. 102 and 103]* 2. The Court has had regard to the reports of the various international human and domestic human rights NGOs, the US State Department and the submissions made by the Helsinki Federation for Human Rights. According to these materials, there were numerous credible reports of torture, ill-treatment of detainees, routine beatings and the use of force against criminal suspects by the Kazakh law-enforcement authorities to obtain confessions. All the above reports equally noted very poor prison conditions, including overcrowding, poor nutrition and untreated diseases. It is also reported that allegations of torture and ill-treatment are not investigated by the competent Kazakh authorities. The Court does not doubt the credibility and reliability of these reports. Furthermore, the respondent Government have not adduced any evidence, information from reliable sources or relevant reports capable of rebutting the assertions made in the reports above. In so far as the applicant alleged that he would face a risk of torture with a view to extracting a confession, there is no evidence that there is a real and imminent risk of him, personally, being subjected to the kind of treatment proscribed by Article 3. However, from the materials referred to above it appears that any criminal suspect held in custody runs a serious risk of being subjected to torture or inhuman or degrading treatment, sometimes without any aim or particular purpose. Thus, the Court accepts the applicant's contention that the mere fact of being detained as a criminal suspect, as in the instant case, provides sufficient grounds to fear a serious risk of being subjected to treatment contrary to Article 3 of the Convention. The assurances of the Kazakhstan General Prosecutor's Office concerning death penalty do not specifically exclude that the applicant would be subjected to treatment contrary to Article 3 of the Convention, and so cannot suffice to exclude the serious risks referred to above. *[paras. 111, 112 and 113]* 3. A forty minutes' delay in informing the applicant of the reasons for his arrest, as alleged by the Government, would not, *prima facie*, raise an issue under Article 5§2 of the Convention. However, the only document relied on by the Government is the detention record referred to above, and it does not record the time or date of the applicant's signature. Further, it appears from the records of the sobering up facility that the applicant was not at the police station forty minutes after his arrest, but at the facility. There is thus no reliable indication of whether, and if so when the applicant was informed that his detention was with a view to extraditing him to Kazakhstan. *[para. 147]*
King v. United Kingdom No.: 9742/07	*Circumstances:* Extradition of a British national from the United Kingdom to Australia for the purposes of prosecution. Interim measure complied with.

Type: Decision Date: 26 January 2010 Articles: N: 3, 6, 8 Keywords: – assurances – extradition (grounds for refusal) – fair trial – family life (separation of family) – ill-treatment Links: English only Translations: not available	*Relevant complaints:* 1. If extradited and convicted, there was a real risk that the applicant would be sentenced to life imprisonment without parole. 2. The applicant would suffer a flagrant denial of justice since he would be unable to obtain legal aid and, furthermore, he would be unable to secure the attendance of witnesses for his defence who would have to travel from Europe to Australia to attend the trial since the Australian authorities were only prepared to allow video link evidence for non-contentious testimony. The Australian legal-aid budget would not meet the cost of travel. This would infringe the right to equality of arms, the right to legal assistance and the right to obtain the attendance and examination of witnesses. 3. The extradition would constitute a disproportionate interference with the applicant's right to respect for his family life. *Court's conclusions:* 1. A sentence of life imprisonment without parole is unlikely to be imposed in this case and thus there is no real risk of the applicant serving such a sentence if convicted in Australia. The Australian authorities have distinguished that case from the present one by indicating that, if the applicant is convicted, the prosecution will not submit to the court that a sentence of life imprisonment without parole is an appropriate sentencing option. No significance can be attached to the absence of any diplomatic assurance from the Australian Government that a sentence of life imprisonment with no non-parole period will not be sought and no fault can be attached to the United Kingdom Government for failing to seek such an assurance; both Governments were entitled to take the view that, since such a sentence was highly unlikely, no such assurance was necessary. *[para. 19]* 2. The applicant has failed to demonstrate that his trial in Australia would give rise to a breach of Article 6 of the Convention, still less that it would amount to a flagrant denial of justice of the kind contemplated by the Court in Soering v. United Kingdom and Mamatkulov and Askarov v. Turkey. The applicant has failed to demonstrate that the Australian authorities would not give due consideration to any application for legal aid he might choose to make. Article 6§3(d) of the Convention does not guarantee the accused an unlimited right to secure the appearance of witnesses in court: it is for the domestic courts to decide whether it is appropriate to call a witness. *[paras. 23 and 24]* 3. Mindful of the importance of extradition arrangements between States in the fight against crime (and in particular crime with an international or cross-border dimension), the Court considers that it will only be in exceptional circumstances that an applicant's private or family life in a Contracting State

	will outweigh the legitimate aim pursued by his or her extradition. In the applicant's case, the Court notes that he relies on the fact that he has a wife, two young children and a mother in the United Kingdom, whose ill-health would not allow her to travel to Australia. This, in the Court's view, is not an exceptional circumstance which would militate in favour of the applicant's non-extradition. Although the long distance between the United Kingdom and Australia would mean the family would enjoy only limited contact if the applicant were extradited, convicted and sentenced to a term of imprisonment there, the Court cannot overlook the very serious charges he faces. Given those charges, and the interest the United Kingdom has in honouring its obligations to Australia, the Court is satisfied that the applicant's extradition cannot be said to be disproportionate to the legitimate aim served. *[para. 29]*
Baysakov and others v. Ukraine No.: 54131/08 Type: Judgment Date: 8 February 2010 Articles: Y: 3, 13; N: 2 Keywords: – assurances – death penalty – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Russian	*Circumstances:* Extradition of four people, who had been granted refugee status by Ukrainian authorities, from Ukraine to Kazakhstan for the purposes of prosecution that could result in imposition of death penalty. Interim measure complied with. *Relevant complaints:* 1. The applicants were wanted by the Kazakh authorities for their political activities in that country and if extradited to Kazakhstan they would be tortured by the authorities with the aim of extracting their confessions and subjected to the unacceptable conditions of detention. They argued that the assurances against ill-treatment provided by the Office of the General Prosecutor of Kazakhstan were not legally binding on that State. 2. The first applicant complained under Article 2 of the Convention that, given the charges against him (conspiracy to murder) and the allegedly vague Constitutional provisions on the death penalty, there was a real risk that he would be subjected to capital punishment in Kazakhstan if he was extradited to that country. He also maintained that the moratorium on executions imposed by the President of the Republic of Kazakhstan could be discontinued if the Kazakh Parliament decided that the legislative provisions on the death penalty remained in force. *Court's conclusions:* 1. According to the information concerning the human rights situation in that country obtained from the UN Committee Against Torture, Human Rights Watch and Amnesty International, there were numerous credible reports of torture, ill-treatment of detainees, routine beatings and the use of force against criminal suspects by the Kazakh law-enforcement authorities to obtain confessions. All the above reports equally noted very poor prison conditions, including overcrowding, poor nutrition and untreated diseases. The applicants' allegations of political persecution in Kazakhstan were confirmed

	by the Ukrainian authorities in the decision by which the applicants were granted refugee status. The assurances that the applicants would not be ill-treated given by the Kazakh prosecutors cannot be relied in the present case, for the same reasons as in *Soldatenko*. In particular, it was not established that the First Deputy Prosecutor General of Kazakhstan or the institution which he represented was empowered to provide such assurances on behalf of the State and, given the lack of an effective system of torture prevention, it would be difficult to see whether such assurances would have been respected. *[paras. 49, 50 and 51]* 2. The mere possibility of such a risk because of the alleged ambiguity of the relevant domestic legislation cannot in itself involve a violation of Article 2 of the Convention. *[para. 82]*
Garkavyy v. Ukraine	*See List D*
Klein v. Russia No.: 24268/08 Type: Judgment Date: 1 April 2010 Articles: Y: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – in absentia Links: English only Translations: not available	*Circumstances:* Extradition of an Israeli national from Russia to Colombia for the purposes of enforcement of a sentence of imprisonment combined with a fine imposed in absentia on the basis of reciprocity. Interim measure complied with. *Relevant complaints:* 1. If extradited to Colombia, the applicant would most probably be subjected to ill-treatment contrary to Article 3 of the Convention. Recent reports by the UN Committee Against Torture, the UN Human Rights Committee, the UN High Commissioner for Human Rights, the U.S. State Department and Amnesty International showed a questionable human rights situation in Colombia and provided "compelling evidence about overcrowding, insecurity, corruption, and insufficient budget in the prison system and detention conditions, and deadly violence amongst inmates as well as excessive force and brutality by prison guards. Torture and other cruel, inhuman, or degrading treatment or punishment by police, military and prison guards continued to be reported." 2. The applicant pointed out to an alleged statement by Colombian Vice-President Santos that "Hopefully they'll hand Klein over to us so [that] he can rot in jail for all the damage he's caused [to] Colombia."; the statement illustrated the serious risk of ill-treatment that the applicant would face once extradited, given that the Vice-President was the second most influential official of the executive branch. 3. The applicant further asserted that diplomatic assurances given by the Colombian Government did not suffice to guarantee him against such risk. *Court's conclusions:* 1. The information from various reliable sources, including those referred to by the applicant, undoubtedly illustrates that the overall human-rights situation in Colombia is far from perfect. For

	instance, State agents are presumed liable for a number of extrajudicial killings of civilians, forced disappearances and arbitrary detentions. The Committee against Torture expressed its concerns that measures adopted or being adopted by Colombia against terrorism and illegal armed groups could encourage the practice of torture. The Court further notes that the evidence before it demonstrates that problems still persist in Colombia in connection with the ill-treatment of detainees. *[paras. 51 and 53]* 2. It appears that the statement expressing the wish of a high-ranking executive official to have a convicted prisoner "rot in jail" may be regarded as an indication that the person in question runs a serious risk of being subjected to ill-treatment while in detention. . The Supreme Court of Russia limited its assessment of the alleged individualised risk of ill-treatment deriving from Vice-President Santos's statement to a mere observation that the Colombian judiciary were independent from the executive branch of power and thus could not be affected by the statement in question. The Court is therefore unable to conclude that the Russian authorities duly addressed the applicant's concerns with regard to Article 3 of the Convention in the domestic extradition proceedings. *[paras. 54 and 56]* 3. The assurances from the Colombian Ministry of Foreign Affairs to the effect that the applicant would not be subjected to ill-treatment there were rather vague and lacked precision; hence, the Court is bound to question their value. The Court also reiterates that diplomatic assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention. *[para. 55]*
Charahili v. Turkey No.: 46605/07 Type: Judgment Date: 13 April 2010 Articles: Y: 3, 5§1 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: Turkish	*Circumstances:* Expulsion from Turkey to Tunisia of a person who had been granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaint:* Removal to Tunisia would expose the applicant to a real risk of death or ill-treatment. He had been convicted in absentia and sentenced to imprisonment in Tunisia for membership in an alleged terrorist organization. *Court's conclusions:* The Court must give due weight to the UNHCR's conclusions as to the applicant's claim regarding the risk which he would face if he were to be removed to Tunisia. Unlike the Turkish authorities, the UNHCR interviewed the applicant and tested the credibility of his fears and the veracity of his account of circumstances in his country of origin. Following this interview, it found that the applicant risked being subjected to ill-treatment in his country of origin. *[para. 59]*

Keshmiri v. Turkey No.: 36370/08 Type: Judgment Date: 13 April 2010 Articles: Y: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: Turkish	*See the summary of the very similar case of Abdolkhani and Karimnia v. Turkey (No. 1).*
Tehrani v. Turkey Nos.: 32940/08 & 41626/08 & 43616/08 Type: Judgment Date: 13 April 2010 Articles: Y: 3, 5§1, 5§4, 13; N: 3 Keywords: – asylum – custody (judicial review) – custody (lawfulness) – expulsion – ill-treatment Links: English only Translations: Turkish	*Circumstances:* Expulsion from Turkey to Iraq or Iran of a person granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaints:* 1. The applicant's removal to Iraq or Iran would expose him to a real risk of death or ill-treatment. 2. The applicants did not have an effective domestic remedy whereby they could raise their allegations under Articles 2 and 3 of the Convention. *Court's conclusions:* 1. In respect of Article 3 of the Convention, the Court notes in particular that the applicants were ex-members of the PMOI acknowledged as refugees by the UNHCR, and that the situation in Iran or Iraq has not changed since the Court's above-cited Abdolkhani and Karimnia, judgment. *[para. 66]* 2. Concerning Article 13 of the Convention, the Court notes that it is not clear from the submissions of the parties whether and, if so, to what extent the national authorities examined the applicants' fear of persecution. There has also been a violation of Article 13 of the Convention due to the lack of an automatic suspensive effect in the Turkish asylum procedure. *[para. 66]*
Trabelsi v. Italy No.: 50163/08 Type: Judgment Date: 13 April 2010 Articles: Y: 3, 34 Keywords: – assurances	*Circumstances:* Expulsion of a Tunisian national from Italy, after serving a sentence, to Tunisia where he was sentenced in absentia by a military Court to 10 years imprisonment for terrorist offences. After the applicant was expelled, Tunisia, at the request of Italy, provided assurances that the applicant would enjoy the safeguards of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure not complied with. *Relevant complaints:*

– expulsion – ill-treatment – interim measure Links: French only Translations: Italian	1. The applicant claimed that several Tunisian nationals expelled to Tunisia on the ground that they were suspected of terrorism had no longer shown any signs of life. Reports published by Amnesty International and the US Department of State demonstrating that torture was used in Tunisia confirmed that claim. The assurances provided are not reliable. 2. The assurances provided by Tunisia only reached Italian authorities 1 month after the expulsion took place. Therefore, expulsion was decided without any formal guarantees provided by Tunisia. *Court's conclusions:* 1. The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of ill-treatment is firmly established. The existence of a risk of ill-treatment must be assessed primarily with those facts which were known or ought to have been known to the State at the time of expulsion. The Court is not precluded, however, from having regard to information which came to light subsequently and which might be of value in confirming or refuting the appreciation made by the State of the well-foundedness of an applicant's fears. *[paras. 47, 48 and 49]* 2. Where a risk of irreparable damage is plausibly asserted, the object of the interim measure is to maintain the status quo pending the Court's determination of the case. There is clear evidence that because of his expulsion, the applicant was unable to submit all relevant arguments in his defence and that the Court's judgment is likely to be deprived of its effect. The removal is a serious obstacle that might prevent Italy from honouring its obligations under Articles 1 and 46 of the Convention, to protect the applicant's rights and make reparation for the consequences of any violation found by the Court. In addition, the Government, before expelling the applicant has not requested the lifting of the interim measure, it knew was still in force, and proceeded with the expulsion before obtaining diplomatic assurances it invokes in its observations. *[paras. 65, 68, 69 and 70]*
Khodzhayev v. Russia No.: 52466/08 Type: Judgment Date: 12 May 2010 Articles: Y: 3, 5§1, 5§4 Keywords:	*Circumstances:* Extradition of an asylum seeker from Russia to Tajikistan for the purposes of prosecution for membership in a proscribed organisation. Interim measure complied with. *Relevant complaints:* 1. If extradited to Tajikistan, the applicant would be subjected to ill-treatment in breach of Article 3 of the Convention. He also claimed that the Russian authorities had failed to assess risks of ill-treatment that he would run in the requesting country.

– assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: Armenian	2. The applicant's ongoing detention pending extradition had been "unlawful": first, until 21 December 2007 he had been detained in the absence of an official request for extradition; secondly, the term of his detention had not been extended by the domestic courts. He had not been promptly informed of the reasons for his arrest. His detention had not been subject to any judicial control and he had been deprived of the right to have the lawfulness of his detention reviewed by a court owing to lack of access to a lawyer during the first two weeks of his detention. *Court's conclusions:* 1. The main argument raised by the applicant under Article 3 of the Convention is the danger of ill-treatment in Tajikistan, exacerbated by the nature of the crime that he had been charged with. The Court observes in this respect that he was accused of involvement in the activities of Hizb ut-Tahrir, a transnational Islamic organisation. It reiterates that in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the information contained in recent reports from independent international human-rights-protection associations or governmental sources, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3 of the Convention. The Government's reference to the fact that the applicant did not apply for political asylum immediately after his arrival to Russia does not necessarily refute the applicant's allegations of risks of ill-treatment since the protection afforded by Article 3 of the Convention is in any event broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees. The assurances given in the present case were rather vague and lacked precision; hence, the Court is bound to question their value. *[paras. 100, 101 and 103]* 2. The Court takes note of the Government's claim that the applicant's placement in custody was governed by Article 62§1 of the Minsk Convention and observes that this provision allows for up to forty days' custodial detention pending receipt of the official request for extradition from the requesting country. The period that elapsed between the date of the applicant's arrest and the date of issue of the Tajik request for extradition amounts to twenty-four days. In such circumstances the Court has no grounds on which to conclude that the applicant's detention prior to receipt of the Tajik authorities' official request for his extradition, that is, between 27 November and 21 December 2007, was "unlawful" merely owing to the lack of an official request for extradition. However, an issue

	arises as to whether the judicial authorisation of the applicant's detention given by the Town Court on 30 November 2007 was sufficient to hold the applicant in custody for any period of time – no matter how long – until the decision on the extradition request had been made, or whether the detention was to be reviewed at regular intervals. In the absence of any domestic court decision extending the applicant's detention, the Court is bound to conclude that after 29 May 2008, that is, six months after the date of his placement in custody, the applicant was detained in breach of the provisions of Article 109§2 of the CCP and, therefore, his detention pending extradition cannot be considered "lawful" for the purposes of Article 5§1 of the Convention. The Court observes that, as can be seen from the written statement signed by the applicant, on the day of his arrest he studied at least some investigative documents concerning the criminal case instituted against him in Tajikistan and claimed that he had not committed the crimes he had been charged with. In such circumstances the Court considers that the information provided to the applicant by the Russian authorities was sufficient to satisfy their obligation under Article 5§2 of the Convention. The Government failed to show that the existence of the remedies invoked was sufficiently certain both in theory and in practice and, accordingly, that these remedies lack the requisite accessibility and effectiveness under Article 5§4 of the Convention. *[paras. 137, 138, 141, 116 and 129]*
Khaydarov v. Russia No.: 21055/09 Type: Judgment Date: 20 May 2010 Articles: Y: 3, 5§1, 5§4 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Azerbaijani, German	*Circumstances:* Extradition of an asylum seeker, recognized by the UNHCR as a person requiring international protection, from Russia to Tajikistan for the purposes of prosecution for membership in an illegal armed group. Interim measure complied with. *Relevant complaints:* 1. If extradited to Tajikistan, the applicant would be subjected to ill-treatment in breach of Article 3 of the Convention. He also claimed that the Russian authorities had failed to assess risks of ill-treatment that he would run in the requesting country. 2. The applicant complained that the wording of the extradition order had violated his right to be presumed innocent, in breach of Article 6§2 of the Convention. *Court's conclusions:* 1. The applicant argued that the risk of his being subjected to ill treatment in Tajikistan was exacerbated by his ethnic Uzbek origin. The Court points out in this connection that instances of discrimination against Uzbeks in Tajikistan have been reported. Furthermore, the applicant brought to the Russian authorities' attention the fact that the charges against him concerned events that had taken place in the aftermath of the civil war. The Court observes in this connection that, according to the US Department of State, several hundred political prisoners, including former opponents of the

	governing party who fought in the civil war, are being held in Tajikistan. The Court also observes that the Russian Office of the UNHCR, having studied the applicant's case, concluded that the criminal charges of banditry had amounted to disguised persecution "on the grounds of political views attributed to the applicant, since [the Tajik authorities] associate the applicant with anti-governmental activities because he had been a member of militia groups suspected of involvement in the armed conflict of August 1997". In such circumstances the Court considers that the applicant's personal situation would be more likely to increase the risk to him of harm in Tajikistan. The Government's reference to the fact that the applicant did not apply for asylum immediately after his arrival in Russia does not necessarily refute his allegations of risks of ill-treatment since the protection afforded by Article 3 of the Convention is in any event broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention Relating to the Status of Refugees. Moreover, it is noteworthy that the Russian Office of the UNHCR acknowledged that, in its opinion, the applicant qualified as a "refugee" within the meaning of the 1951 Convention. The Tajik Prosecutor General's Office's letters of 10 April and 26 May 2009, which the Government described as diplomatic assurances, contained no reference whatsoever to the protection of the applicant from treatment proscribed by Article 3 of the Convention. The Court is struck by the fact that both the City Court and the Supreme Court claimed that the letters from the Tajik Prosecutor General's Office of 10 April and 26 May 2009 had provided assurances that the applicant would not be ill-treated in Tajikistan, whereas it is clear from those documents that no such assurances were given. *[paras. 107, 109 and 111]* 2. The Court points out that the extradition order of 20 November 2008 stated that "[t]he actions of [Mr] M. Khaydarov are punishable under the Russian criminal law and correspond to Article 209§2 of the Russian Criminal Code". In the Court's view, the sentence in question refers first and foremost to the classification of the acts with which the applicant was charged in Tajikistan under Russian law. Although the wording employed by the Russian Prosecutor General's Office was rather unfortunate since there was no clear indication of the fact that the applicant had been merely suspected of having committed "actions punishable under the Russian criminal law", the Court considers that the Russian Prosecutor General's Office was referring not to the question whether the applicant's guilt had been established by the evidence – which was clearly not for the determination of the prosecutor issuing an extradition order – but to the question whether there were legal grounds for the applicant's extradition. In such circumstances the Court cannot conclude that the wording of

	the extradition order amounted to a declaration of the applicant's guilt in breach of the principle of the presumption of innocence. *[paras. 150 and 151]*
Kolesnik v. Russia No.: 26876/08 Type: Judgment Date: 17 June 2010 Articles: Y: 3, 5§1, 5§4; N: 6§2 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition of a failed asylum seeker from Russia of a Turkmenistan national, married to a Russian national and mother to two Russian nationals, to Turkmenistan for criminal prosecution for economic crimes and fraud. The General Prosecutor's Office of Turkmenistan provided assurances that in the event of extradition the applicant would not be subjected to political persecution, nor to torture or inhuman and degrading treatment and punishment and referred to Turkmenistan's obligations under the International Covenant of Civil and Political Rights and the fact that the death penalty had been abolished in Turkmenistan in 1999. Furthermore, the letter stated that under the legislation of 1999, every year at the time of a Muslim festival there was an amnesty for convicted criminals if they had repented and taken the path to reform. Interim measure complied with. *Relevant complaints:* 1. The decision to extradite the applicant to Turkmenistan would expose her to torture and inhuman treatment and punishment. The mere fact of being detained as a criminal suspect in Turkmenistan provides sufficient grounds for fear that the applicant will be at serious risk of being subjected to treatment contrary to Article 3 of the Convention. As a non-Turkmen, she would be particularly vulnerable in the face of violations of human rights. The Russian authorities had failed to take into account the applicant's arguments of such treatment, since they had relied on the materials that were either incomplete, such as the statements of the Russian Ministry of Foreign Affairs, or biased, such as letters from the General Prosecutor's Office of Turkmenistan. By sending a letter directly to the Turkmen authorities with a reference to the applicant's allegations of ill-treatment and lack of guarantees of a fair trial, the Moscow City Court had put her at an even greater risk of persecution, since she could now be perceived as a dissident and someone who had slandered the image of Turkmenistan abroad. 2. The decisions of the Russian prosecutors and courts had violated the presumption of innocence in so far as they referred to the applicant having committed crimes in Turkmenistan. *Court's conclusions:* 1. The Court finds that the dismissal by the courts of the applicant's complaints was based on the assumption that she had relied on general information which was not matched by her personal circumstances. However, having regard to the information about the situation in Turkmenistan and the fact that the first applicant is charged with crimes potentially entailing a lengthy prison sentence there, the Court finds that she has sufficient grounds to fear that she would be at serious risk of being

	subjected to treatment contrary to Article 3 of the Convention. In its previous judgments, the Court was also unwilling to accept the diplomatic assurances furnished by the Turkmen Government, given that there appeared no objective means to check whether they had been fulfilled. The Court also would state that it has already found that diplomatic assurances were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which were manifestly contrary to the principles of the Convention. Likewise, in the present case the Court cannot agree with the Government that the assurances given by the Turkmen authorities would suffice to guarantee protection for the applicant against the serious risk of ill-treatment in the event of extradition. *[paras. 72 and 73]* 2. The decisions of the Russian prosecutors to extradite the applicant clearly referred to the documents submitted by the authorities of Turkmenistan by which the applicant had been charged with the imputed offences. Similarly, the decisions of the courts on the lawfulness of the extradition order were construed so as to describe the charges pending against the applicant in Turkmenistan. In such circumstances the Court does not consider that the statements by the Russian officials amounted to a declaration of the applicant's guilt, but rather described the "state of suspicion" which had served as the basis for the extradition request and the subsequent decision to extradite her. *[para. 92]* *[NOTE: The complaint and the Court's conclusions regarding the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*
Gäfgen v. Germany No.: 22978/05 Type: Judgment [GC] Date: 6 July 2010 Articles: Y: 3; N: 6§1, 6§3 Keywords: – ill-treatment Links: English, French Translations: Albanian, Armenian, Azerbaijani, Bosnian, Bulgarian, Croatian, Georgian, German,	*Circumstances:* Use of evidence obtained in violation of Article 3 of the Convention (threat of torture) in criminal trial. Difference between torture and inhuman treatment. *Relevant complaint:* The applicant claimed that during his interrogation by detective officer E. on 1 October 2002, he had been subjected to treatment prohibited by Article 3 of the Convention. Detective officer E. had threatened that "intolerable pain the likes of which he had never experienced" would be inflicted on him if he did not disclose J.'s whereabouts. He had threatened that this pain would be inflicted without leaving any traces and that an officer, specially trained in such techniques, was en route to the police station in a helicopter. Physical injuries had also been inflicted on him during the interrogation. E. had hit him several times on the chest, causing bruising, and on one occasion had pushed him, causing his head to hit the wall. He claimed that he had been threatened by the police at a time when they had already been aware that J. was dead and had therefore been forced to incriminate himself solely in order to further the criminal investigations against him.

Icelandic, Macedonian, Romanian, Russian, Serbian, Spanish, Turkish, Ukrainian Chamber Judgment: English, French (Translations: German, Icelandic, Italian, Russian)	*Court's conclusions:* The Court has considered treatment to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. Treatment has been held to be "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience. In determining whether a particular form of ill-treatment should be classified as torture, consideration must be given to the distinction, embodied in Article 3 of the Convention, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating. The Court further reiterates that a threat of conduct prohibited by Article 3 of the Convention, provided it is sufficiently real and immediate, may fall foul of that provision. Thus, to threaten an individual with torture may constitute at least inhuman treatment. *[paras. 89, 90 and 91]*
Babar Ahmad and others v. United Kingdom (Decision) Nos.: 24027/07, 11949/08 & 36742/08 Type: Decision (Partial) Date: 6 July 2010 Articles: Y: 3; N: 2, 3, 5, 6, 8, 14 Keywords: – assurances – death penalty – extradition (grounds for refusal) – fair trial – ill-treatment – life sentence Links: English only	*NOTE: For the Judgment, see below.* *Circumstances:* Extradition of three British nationals and one person of disputed nationality from the United Kingdom to the United States of America for the purposes of prosecution for various terrorist and terrorism-related offences. *Relevant complaints:* 1. The question whether there was a real risk of designation as enemy combatants could only be assessed in the light of evidence of the United States' approach towards individuals suspected of possessing information on terrorism. The applicants were of potential, ongoing interest as subjects for interrogation to obtain such information. They also submitted an affidavit from an American lawyer who specialised in terrorism cases, in which he stated that the reference to "federal court" in the Diplomatic Notes did not guarantee a trial in the civilian courts but would allow for trial in any court created by the federal government. The applicants also argued that the real risk of designation as enemy combatants did not even require a finding of bad faith; the ambivalent language of the Diplomatic Notes allowed for transfer to Guantánamo Bay after trial or even designation as an enemy combatant in the event of an acquittal. Moreover, the breadth of the counter-terrorism powers of the

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

	extradition request, before or after the events of 11 September 2001. While the applicants and Amnesty International have relied on the alleged breach of assurances given in respect of Diego Garcia, on the basis of the United Kingdom Government's observations, the Court is satisfied that those assurances were given in error and corrected by the United States Government. In any event, the assurances given in the present cases are materially different: they are specific to the applicants and are unequivocal. There is no suggestion that they have been given in error. It is true that these assurances have been given by the United States Government to the United Kingdom Government and not to the applicants. On this basis, Amnesty International has observed in its report that there is no mechanism by which the applicants could enforce the assurances which have been given. However, in the Court's view that would only be relevant if it were established that there was a real risk of a breach of those assurances. *[paras. 105 through 108]* 2. It may well be that, as the first applicant has argued, the doctrine of conspiracy would support a capital charge against him. However, the United States prosecutors have already set out the charges which he would face upon extradition and made clear that the death penalty is not sought in respect of any of them. To the extent that, in federal cases, the final decision on whether to seek the death penalty rests with the Attorney-General and not the attorney responsible for the prosecution, there is no reason to suggest that the Attorney-General is any more likely to breach the terms of the United States' assurances than the President. Finally, the Court can find no grounds that would suggest the assurances in respect of the death penalty only apply to the indictments which are pending against the first and third applicants and not to any superseding indictments. *[para. 119]*
Abdulazhon Isakov v. Russia No.: 14049/08 Type: Judgment Date: 8 July 2010 Articles: Y: 3, 5§1, 5§4, 13 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – extradition (effective remedies)	*Circumstances:* Extradition of an unsuccessful asylum seeker from Russia to Uzbekistan for the purposes of prosecution for active participation in subversive activities of an extremist organization (jihad). *Relevant complaint:* The applicant's extradition to Uzbekistan would subject him to a real risk of torture and ill-treatment and political persecution. *Court's conclusions:* As to the applicant's allegation that detainees suffer ill-treatment in Uzbekistan, the Court has recently acknowledged that this general problem still persists in the country. No concrete evidence has been produced to demonstrate any fundamental improvement in this area in Uzbekistan in the last several years. Given these circumstances, the Court considers that ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan. As to the applicant's personal situation, the Court observes that he was charged with politically motivated crimes. Given that an arrest warrant was issued in respect of the applicant, it is most likely that he would be directly placed in custody after his extradition and would therefore run the serious risk of ill-treatment. The Government did not submit a copy of any

– extradition (grounds for refusal) – ill-treatment – nationality Links: English only Translations: not available	diplomatic assurances indicating that the applicant would not be subjected to torture or ill-treatment. Secondly, the Court has already cautioned against reliance on diplomatic assurances against torture from a State where torture is endemic or persistent. Given that the practice of torture in Uzbekistan is described by reputable international experts as systematic, the Court would not be persuaded that assurances from the Uzbek authorities could offer a reliable guarantee against the risk of ill-treatment. *[paras. 109, 110 and 111]* *[NOTE: The complaint and the Court's conclusions regarding the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*
Y. P. and L. P. v. France No.: 32476/06 Type: Judgment Date: 2 September 2010 Articles: Y: 3 Keywords: – asylum – expulsion – ill-treatment Links: French only Translations: not available	*Circumstances:* Expulsion of a Belarusian couple from France to Belarus after their application for asylum was rejected. Interim measure complied with. *Relevant complaint:* The applicants claimed that if expelled to Belarus they would be at risk of ill-treatment. Y.P was a political activist within the Belarus Popular Front and, as such, was arrested several times and subjected to ill-treatment by Belarus police. He claimed that he was still an active member of that political party. *Court's conclusions:* The expulsion by a contracting State may give rise to an issue with regards to Article 3 of the Convention when there are serious and confirmed reasons to believe that an applicant, if expelled, runs a real risk of being subjected to a treatment contrary to Article 3 of the Convention. In order to assess such a risk, the date to be taken into account is that of the proceedings before the Court and it is therefore necessary to consider information that has come to light after the internal authorities have reached a final decision. Although the European Union and the Council of Europe have observed important developments in Belarus, that State does not, as of yet, fulfil the criteria to become a member of the Council of Europe. The Court must examine the personal situation of the applicant and assess the credibility of the story he has presented to the national authorities and the Court. The Court will examine the motives of the national authorities and confront them with the applicant's allegations in light of the information on the country's situation. The Court recalls that the passage of time should not determine the risk run by the applicant without engaging in an assessment of the current policy of Belarus authorities. The applicant's degree of political activism allows to presume that the passage of time does not diminish the risk of ill-treatment. *[paras. 62, 65, 67, 68, 71, 72 and 73]*
Chentiev and Ibragimov v. Slovakia	*Circumstances:* Extradition of two Russian nationals of Chechen ethnic origin from Slovakia to Russia for the purposes of prosecution for taking part, as members of an organised group, in the killing of two

Nos.: 21022/08 & 51946/08 Type: Decision Date: 14 September 2010 Articles: N: 2,3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	agents of the Ministry of the Interior in Grozny in June 2001. The Office of the Prosecutor General of the Russian Federation provided assurances, according to which the second applicant would not face the death penalty and that such punishment was in any event not carried out in Russia. The Russian authorities had also offered the opportunity for Slovakian diplomatic representatives to meet the applicants at the place of their deprivation of liberty without third parties present. *Relevant complaints:* 1. The applicants complained that they would be subjected to torture or to inhuman and degrading treatment and that they ran the risk of capital punishment if extradited to Russia. The guarantees offered by the Russian authorities in their cases did not exclude the imposition of the death penalty on them; they merely indicated that such a sentence, if imposed, would not be carried out; the moratorium on the death penalty in Russia did not sufficiently protect the applicants from receiving that penalty. Furthermore, no assurance had been given that they would not be punished with life imprisonment without the possibility of parole. 2. The accusation against them was based on the single testimony of a witness, which had been extracted under torture and in disregard of his defence rights. 3. The applicants cast doubt on the offer of the opportunity for Slovakian diplomatic agents to visit them during their deprivation of liberty in Russia as being too generally worded, and also indicating that it did not imply that Slovakian authorities were obliged and would actually make use of it. *Court's conclusions:* 1. The Court considers it important that the assurances were issued under the authority of the Prosecutor General, who, within the Russian system, supervises the activities of all prosecutors in the Russian Federation, including the argumentation of the case for the prosecution before the courts. The Slovakian authorities thoroughly examined whether the applicants risked ill-treatment if extradited to Russia. Various internationally available data on the use of violence by Russian armed forces against the civilian population of Chechnya did not prove the existence of a specific risk that the applicants would be ill-treated if extradited. The Court does not find arbitrary or otherwise unacceptable the conclusion that the documents and facts to which the applicants referred did not establish that extradition would have imposed a personal threat on them. *[pages 13 and 14]* 2. The alleged ill-treatment of the witness whose statements has given rise to the applicants' prosecution did not constitute proof that the applicants would be subjected to treatment incompatible with Article 3 of the Convention. The applicants have not submitted any document supporting their allegation that the witness was ill-treated following his extradition to Russia. ¨ The authorities of the Russian

	Federation, which is a Contracting Party to the Convention, expressly guaranteed a fair trial to the applicants including the assistance of defense counsel and, if needed, of interpreters. There is no indication that in the course of their trial the applicants would be deprived of a fair hearing within the meaning of Article 6 of the Convention. In addition, the Russian Government explicitly guaranteed that they would have the possibility, if need be, to lodge an application to the Court challenging any shortcomings in the domestic proceedings. *[pages 14 and 16]* 3. Russia was a member State of the Council of Europe and a Contracting Party to the Convention. All persons within its jurisdiction were therefore entitled to seek redress before the Court as regards any alleged breach of their Convention rights by the Russian authorities. A possible failure by Russian authorities to comply with the assurances issued by them would undermine the trust of its partners and affect further processing of similar requests. A possible failure to respect such assurances would seriously undermine that State's credibility. The Embassy of Slovakia to Russia would be informed of the place of the second applicant's detention and Slovakian diplomatic representatives would be able to visit the second applicant and speak to him without third persons present. Unlike in Gasayev, diplomatic monitoring of compliance with the assurances given by the Russian authorities was not requested by the domestic courts. It is therefore admittedly within the discretionary power of Slovakian authorities to avail themselves, or not, of the opportunity to carry out such monitoring. Nevertheless, by offering that opportunity the Russian authorities undoubtedly gave additional weight to the guarantees previously given. The Court finds nothing which could reasonably have given the Slovakian authorities grounds to doubt the credibility of the assurances provided by the Russian Prosecutor General during the decision-making process. In the light of all the material before it, the Court can accept the conclusion reached, namely that the facts of the case do not disclose substantial grounds for believing that the applicants, if extradited to Russia, face a real and personal risk of torture or of inhuman or degrading treatment or punishment within the meaning of Article 3 of the Convention. *[pages 14 and 15]* *Remark*: Immediately after this decision, the applicants launched new applications, relying on a wider range of alleged violations of the Convention, requesting and obtaining new interim measures under Rule 39. This new matter (No. 65916/10) was decided on 30 June 2015.
Iskandarov v. Russia No.: 17185/05 Type: Judgment Date: 23 September 2010	*Circumstances:* Extradition of an asylum seeker from Russia to Tajikistan for the purposes of prosecution for membership in a proscribed organisation. After denial of the extradition, the applicant was kidnapped and unlawfully removed to Tajikistan. *Relevant complaints:*

Articles: Y: 3, 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Armenian, German, Russian	1. As a result of his unlawful removal to Tajikistan, the applicant had been exposed to ill-treatment and persecution for his political views, in breach of Article 3 of the Convention. 2. The applicant had been arrested by Russian officials in breach of domestic law. The detention was thus unlawful and contrary to article 5§1 of the Convention. *Court's conclusions:* 1. The general political climate prevailing at the material time in Tajikistan could have given reasons to assume that the applicant would be subjected to ill-treatment in the receiving country. Evidence from a number of objective sources undoubtedly illustrates that in 2005 the overall human-rights situation in Tajikistan gave rise to serious concerns. Given that the Government failed to counter the allegations made in the reports by reputable organisations, the Court accepted that ill-treatment of detainees was an enduring problem in Tajikistan in 2005. The general situation in the country of destination should be supported by specific allegations and corroborated by other evidence. The authorities of the requested State should have assessed the risks of ill-treatment prior to taking the decision on removal. The applicant's personal situation gave reasons to suggest that he would run a serious risk of ill-treatment in Tajikistan since he had been one of the possible challengers to President Rakhmonov in the presidential race. By the time of his removal from Russian territory reports concerning the political persecution and ill-treatment of Mr Shamsiddinov, another opposition leader and critic of the regime, had already been issued. Therefore, there existed special distinguishing features in the applicant's case which could and ought to have enabled the Russian authorities to foresee that he might be ill-treated in Tajikistan. The fact that it is impossible to establish whether the applicant was actually subjected to ill-treatment following his return to Tajikistan, as he alleged both before the Court and before other international organisations, has no bearing on the Court's findings. In the absence of an extradition order the applicant was deprived of an opportunity to appeal to a court against his removal – a very basic procedural safeguard against being subjected to proscribed treatment in the receiving country. The applicant's removal to Tajikistan was in breach of the respondent State's obligation to protect him against risks of ill-treatment. *[paras. 129 through 134]* 2. No detention which is arbitrary can be compatible with Article 5§1 of the Convention. The notion of "arbitrariness" in this context extends beyond the lack of conformity with national law. While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5§1 of the Convention, key principles have been developed on a case-by-case basis. Moreover, the notion of arbitrariness in the

	context of Article 5 of the Convention varies to a certain extent depending on the type of detention involved. For example, detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities; where the domestic authorities have neglected to attempt to apply the relevant legislation correctly; or where judicial authorities have authorised detention for a prolonged period of time without giving any grounds for doing so in their decisions. It is deeply regrettable that such opaque methods were employed by State agents in the present case as these practices could not only unsettle legal certainty and instil a feeling of personal insecurity in individuals, but could also generally risk undermining public respect for and confidence in the domestic authorities. The applicant's detention was not based on a decision issued pursuant to national laws. It is inconceivable that in a State subject to the rule of law a person may be deprived of his liberty in the absence of any legitimate authorisation for it. The applicant's deprivation of liberty on 15 April 2005 was in pursuance of an unlawful removal designed to circumvent the Russian Prosecutor General's Office's dismissal of the extradition request, and not to "detention" necessary in the ordinary course of "action … taken with a view to deportation or extradition". Moreover, the applicant's detention was not acknowledged or logged in any arrest or detention records and thus constituted a complete negation of the guarantees of liberty and security of person contained in Article 5 of the Convention and a most grave violation of that article. *[paras. 145 through 150]*
Gaforov v. Russia No.: 25404/09 Type: Judgment Date: 21 October 2010 Articles: Y: 3, 5§1, 5§4; N: 6§2 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – ill-treatment	*Circumstances:* Extradition of a failed asylum seeker (who indicated his intention to challenge the refusal to grant him asylum) from Russia to Tajikistan for the purposes of prosecution on for membership in an extremist organisation and escape from custody. The General Prosecutor's Office of Tajikistan provided assurances that, if extradited, the applicant would not be persecuted on political, ethnic, linguistic, racial or religious grounds and that he would not be subjected to torture or inhuman or degrading treatment or punishment. Interim measure complied with. *Relevant complaints:* 1. If extradited to Tajikistan, the applicant would run a real risk of being subjected to ill-treatment. Relying on reports by various NGOs the applicant stated that torture continued to be applied to detainees in Tajikistan to extract their confessions and that persons prosecuted for their presumed membership in Hizb ut-Tahrir were particularly targeted by the authorities. The applicant further referred to his own experience of ill-treatment at the hands of the authorities and his relatives' reports that they had been threatened and that his co-accused had been severely ill-treated after his escape. After the City Court had asked the Tajikistani authorities to comment on his accusations concerning

Links: English only Translations: not available	the Tajikistani law enforcement system, the risk of the applicant being subjected to ill-treatment in retaliation for his criticism and also for his escape, was all the higher. The applicant also affirmed that the assurances given by the Tajikistani authorities were not sufficient to safeguard him against the alleged risk of ill-treatment. In examining his case the Russian authorities had disregarded his specific submissions concerning his religious and political persecution and relevant reports by independent NGOs, and had relied solely on "official sources of information". The asylum legislation did not unequivocally prohibit extradition of an asylum seeker and the outcome of the asylum proceedings had been prejudged in the extradition proceedings. 2. In stating that the applicant's actions were "punishable under the Russian criminal legislation" the Russian authorities had declared him guilty before trial, which was further proved by the reply of the Russian Prosecutor General's Office, stating that it "had granted their Tajikistani counterpart's request for the applicant's extradition with a view to prosecuting him in connection with his participation in a prohibited religious organisation". In the applicant's opinion, the wording used by the Russian authorities was even capable of influencing the Tajik courts. *Court's conclusions:* 1. In cases where an applicant provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government, the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations. Neither the City Court nor the Supreme Court gave any consideration to a body of relevant information from independent NGOs, relied on by the applicant and enclosed by those courts in the case file materials. Evidence from a number of objective sources describes a disturbing situation in Tajikistan. In particular, the UN Committee against Torture, the US Department of State, Amnesty International and Human Rights Watch described the practice of torture against those in police custody as "systemic", "widespread" and "routine". The Committee also pointed out that detainees were often kept in unrecorded detention, and prevented from having access to legal counsel and medical expertise following their arrest, and that interrogation methods prohibited by the Convention Against Torture were frequently used. Human Rights Watch referred to the issue of incommunicado detention and the US Department of State specifically stated that the Tajik authorities held detainees charged with crimes related to national security incommunicado for long periods of time. It is also noted that several independent observers stated that granting impunity

	to State officials for acts of rampant torture was common practice. It is highly significant for the Court that the Tajikistani authorities have consistently refused to allow independent observers access to detention facilities. As regards the applicant's submission that he had already experienced ill-treatment at the hands of Tajikistani law enforcement officials, the Court observes that he did not adduce certain evidence, such as, for example, his relatives' statements, to support his submission Nonetheless, it considers that the applicant's account of events is consistent and detailed. In so far as the domestic authorities relied on diplomatic assurances from the Tajikistani Prosecutor General's Office, the Court would note that they are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention. *[paras. 118, 125, 130, 131, 134, 135 and 138]* 2. Article 6§2 of the Convention is applicable where extradition proceedings are a direct consequence, and the concomitant, of the criminal investigation pending against an individual in the receiving State. The Court notes that in all of the impugned decisions this phrase was preceded by statements clearly saying that the applicant was charged with those crimes, relating to his alleged participation in Hizb ut-Tahrir and his escape from custody, in respect of which his extradition was being sought. Moreover, both the City Court and the Supreme Court specifically emphasised that the issue of the applicant's guilt in respect of the crimes with which he had been charged in Tajikistan could only be assessed by the courts of the requesting country. Although the wording employed by the Prosecutor General's Office and the courts may be considered rather unfortunate, the Court is satisfied that those authorities were referring not to the question whether the applicant's guilt had been established by the evidence – which was clearly not the issue to be determined in the extradition proceedings – but to whether there were legal grounds for extraditing the applicant to the requesting country. In the Court's opinion, the same holds true for the phrase in the Prosecutor General Office's letter referred to by the applicant. *[paras. 208 and 212 through 214]* *[NOTE: The complaint and the Court's conclusions regarding the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*
Dzhaksybergenov (aka Jaxybergenov) v. Ukraine No.: 12343/10	*Circumstances:* Extradition of a Kazakh national from Ukraine to Kazakhstan for the purposes of prosecution. The General Prosecutor's Office of Kazakhstan provided diplomatic assurances that the

Type: Judgment Date: 10 February 2011 Articles: Y: 2 (Prot. 4); N: 3, 6 Keyword: – assurances – extradition (grounds for refusal) – fair trial – ill-treatment Links: English only Translations: Russian	Ukrainian diplomatic mission would be allowed to visit the extradited person, he would have access to it at any time and their meetings would be free of supervision. *Relevant complaint:* 1. If extradited to Kazakhstan the applicant would face the risk of being subjected to ill-treatment by the Kazakh authorities because of his past as an opposition sympathizer. 2. The applicant also complained about the risk of a flagrant denial of justice by the Kazakh authorities in case of his extradition. *Court's conclusions:* 1. The international documents available demonstrate some improvement in the human rights situation recently and in particular as to conditions of detention. International reports still voice serious concerns as to the human rights situation in Kazakhstan, in particular with regard to political rights and freedoms. However, there is no indication that the human rights situation in Kazakhstan at present is serious enough to call for a total ban on extradition to that country. Reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition. In this regard the applicant asserted that he did not belong to the political opposition or to any other vulnerable group. The applicant's allegation that any criminal suspect in Kazakhstan runs a risk of ill-treatment is too general and not corroborated by any other evidence. Furthermore, his submission that his prosecution is part of a politically motivated campaign against the managers of the BTA Bank is not supported by any documents or other evidence. Therefore, it cannot be said that the applicant referred to any individual circumstances which could substantiate his fears of ill-treatment. *[para. 37]* 2. Similar to the applicant's allegations under Article 3 of the Convention, this complaint under Article 6 of the Convention also refers to the general human rights situation in Kazakhstan and does not refer to any individual circumstances which could substantiate the applicant's fears of suffering a flagrant denial of a fair trial. *[para. 44]*
Elmuratov v. Russia No.: 66317/09 Type: Judgment Date: 3 March 2011 Articles: Y: 5§1(f), 5§4; N: 3, 13 Keywords: – custody (judicial review) – custody (lawfulness)	*Circumstances:* Extradition of an Uzbek asylum-seeker from Russia to Uzbekistan for the purposes of prosecution. *Relevant complaint:* If extradited the applicant would be ill-treated in Uzbekistan. Referring to a number of international reports on the general human rights situation in the requesting country, he asserted that detainees in Uzbek prisons were regularly beaten. He further emphasized that he had been subjected to ill-treatment by Uzbek officials during his previous incarcerations in that country. *Court's conclusions:* There are disquieting reports on human rights situation in Uzbekistan, which, admittedly, is far from being perfect. Nonetheless, the Court emphasises that reference to a general

– extradition (custody) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition. While the Court has on several occasions found violations of Article 3 of the Convention in cases involving extradition to Uzbekistan, the applicants in those cases had been charged with political crimes and thus were members of a group systematically exposed to a practice of ill-treatment as confirmed by reports by reliable independent international sources. The applicant in the present case, however, is charged in Uzbekistan with aggravated theft, an ordinary crime against property. He does not assert that he is being persecuted for political reasons. Nor does he claim to belong to any proscribed religious movement. It does not follow from the materials at the Court's disposal that the applicant belongs to any other vulnerable groups susceptible of being ill-treated in the requesting country. The applicant's allegations that any criminal suspect in Uzbekistan runs a risk of ill-treatment are too general and there is no indication that the human rights situation in the requesting country is serious enough to call for a total ban on extradition to it. Therefore, it cannot be said that the applicant referred to any individual circumstances which could substantiate his fears of ill-treatment. In his submissions before the Court the applicant has not produced any details related to the alleged beatings. The applicant's hospitalisation between 7 and 16 June 2004 was necessitated by self-inflicted wounds and was not a result of police abuse. The medical expert examination report enclosed with his observations on the admissibility and merits of the application is not conclusive as to the date the injuries were inflicted and cannot in itself serve as evidence of ill-treatment. The Court is thus unable to conclude that the applicant's description of previous ill-treatment in 1994-2004 is very detailed or convincing. More importantly, in the course of extradition proceedings in Russia the applicant never referred to ill-treatment by Uzbek officials. In their appeals against the extradition order the applicant and his counsel merely cited the Court's case-law, which is clearly distinguishable from the applicant's personal situation and referred to the overall poor human rights situation in the receiving country, as described by international observers. He raised an issue of his experience of ill-treatment for the first time when complaining about refusal to grant him temporary asylum on 10 February 2010, that is when the extradition order had already become final. In such circumstances the Court is disinclined to find that the applicant has substantiated allegations of an individualised risk of ill-treatment in the requesting country. *[paras. 82, 83, 84, 86 and 87]* *[NOTE: The complaint and the Court's conclusions regarding the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*

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]*
Toumi v. Italy No.: 25716/09 Type: Judgment Date: 5 April 2011 Articles: Y: 3, 34 Keywords: – assurances – expulsion – ill-treatment – interim measure Links: French only Translations: German, Icelandic, Italian	*See the summary of the very similar case of Ben Khemais v. Italy.*
Adamov v. Switzerland No.: 3052/06 Type: Judgment Date: 21 June 2011 Articles: N: 5§1 Keywords:	*Circumstances:* Provisional arrest in view of extradition at the request of the USA of a Russian national who, while visiting Switzerland for family and business reasons, was summoned as a witness in a Swiss criminal case. *Relevant complaints:*

– custody (lawfulness) – extradition (custody) – mutual assistance (hearing witnesses) Links: English, French Translations: Armenian, Icelandic, Russian	1. The applicant claimed that the Swiss authorities wrongfully deprived him of the safe-conduct rule accrued to him under Article 12 of the 1959 Convention on mutual legal assistance in criminal matters. 2. The applicant argued that Swiss authorities resorted to trickery in order to circumvent the formal conditions applicable to summons and deprive him of the immunity he was entitled to. *Court's conclusions:* 1. The applicant travelled freely to Switzerland and not for the specific purpose of testifying in a criminal proceeding. As the present case did not involve any inter-State cooperation in accordance with mutual legal assistance rules, there is no cause to protect the applicant from detention or prosecution based on prior acts or convictions. By accepting to travel to Switzerland without invoking the guarantees that derive from the relevant instruments, the applicant consciously renounced the benefit of the safe-conduct rule. *[paras. 66, 67 and 68]* 2. The words "lawful" and "in accordance with a procedure described by law" in Article 5§1 of the Convention refer to national legislation. The observance of national law is however not sufficient: Article 5§1 of the Convention further requires the adequacy of any deprivation of liberty with the objective of protecting the individual against arbitrary action. The concept of "arbitrary action" goes beyond non-compliance with national law so that a deprivation of liberty may be lawful according to domestic legislation while at the same time being arbitrary and therefore contrary to the Convention. A detention is "arbitrary" when there has been an element of bad faith or trickery. It is not as such contrary to good faith that authorities resort to stratagems to fight crime, although not every trick may be justified. In the present case, the Court notes that the judge summoned the applicant on the basis of information that he was to travel to Switzerland for private reasons and that he was willing to testify. The judge did not trick the applicant into travelling to Switzerland. *[paras. 52, 54, 56, 69 and 70]*
Sufi and Elmi v. United Kingdom Nos.: 8319/07 & 11449/07 Type: Judgment Date: 28 June 2011 Articles: Y: 3 Keywords: – asylum – expulsion	*Circumstances:* Expulsion from the United Kingdom to Somalia following unsuccessful asylum claim in the case of the first applicant and conviction for a series of offences in the case of the second applicant (who had been granted asylum). *Relevant complaint:* The applicants' removal to Mogadishu would expose them to a real risk of being subjected to treatment in breach of Article 3 of the Convention and/or a violation of Article 2 of the Convention. *Court's conclusions:*As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victims conduct, the nature of the offence allegedly committed by the

– ill-treatment Links: English only Translations: German, Icelandic, Russian	applicants is irrelevant for the purposes of article 3. Consequently, the conduct of the applicants, however undesirable or dangerous, cannot be taken into account. The assessment whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention. These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this is relative, depending on all the circumstances of the case. Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection. The assessment of the existence of a real risk must necessarily be a rigorous one. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it. If the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court. A full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities. The need to examine all the facts of the case, require that this assessment must focus on the foreseeable consequences of the removal of the applicant to the country of destination. This in turn must be considered in the light of the general situation there as well as the applicant's personal circumstances. However, an applicant is not required to show the existence of special distinguishing features if he could otherwise show that the general situation of violence in the country of destination was of a sufficient level of intensity to create a real risk that any removal to that country would violate Article 3 of the Convention. To insist in such cases that the applicant show the existence of such special distinguishing features would render the protection offered by Article 3 of the Convention illusory. Moreover, such a finding would call into question the absolute nature of Article 3 of the Convention, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment. However, it is clear that not every situation of general violence will give rise to such a risk. A general situation of violence would only be of sufficient intensity to create such a risk "in the most extreme cases" where there was a real risk of ill-treatment simply by

	virtue of an individual being exposed to such violence on return. The Court is not persuaded that Article 3 of the Convention does not offer comparable protection to that afforded under the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ('Qualification Directive'). In particular, it notes that the threshold set by both provisions may, in exceptional circumstances, be attained in consequence of a situation of general violence of such intensity that any person being returned to the region in question would be at risk simply on account of their presence there. In assessing the weight to be attributed to country material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations. Consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do. The Court accepts that it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and, in such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on. The Court will not, therefore, disregard a report simply on account of the fact that its author did not visit the area in question and instead relied on information provided by sources. That being said, where a report is wholly reliant on information provided by sources, the authority and reputation of those sources and the extent of their presence in the relevant area will be relevant factors for the Court in assessing the weight to be attributed to their evidence. The Court recognises that where there are legitimate security concerns, sources may wish to remain anonymous. However, in the absence of any information about the nature of the sources' operations in the relevant area, it will be virtually impossible for the Court to assess their reliability. Consequently, the approach taken by the Court will depend on the consistency of the sources' conclusions with the remainder of the available information. Where the sources' conclusions are

	consistent with other country information, their evidence may be of corroborative weight. However, the Court will generally exercise caution when considering reports from anonymous sources which are inconsistent with the remainder of the information before it. In the present case the Court observes that the description of the sources relied by the United Kingdom Government's Fact-Finding Mission is vague. As indicated by the applicants, the majority of sources have simply been described either as "an international NGO", "a diplomatic source", or "a security advisor". Such descriptions give no indication of the authority or reputation of the sources or of the extent of their presence in southern and central Somalia. It is therefore impossible for the Court to carry out any assessment of the sources' reliability and, as a consequence, where their information is unsupported or contradictory, the Court is unable to attach substantial weight to it. It is likely that the first applicant would find himself in an IDP settlement such as the Afgooye Corridor or in a refugee camp such as the Dadaab camps. The Court has already found that the conditions in these camps are sufficiently dire to reach the Article 3 threshold and it notes that the first applicant would be particularly vulnerable on account of his psychiatric illness. The second applicant would be at real risk of ill-treatment if he were to remain in the city of Mogadishu. Although it was accepted that he was a member of the majority Isaaq clan, the Court does not consider this to be evidence of sufficiently powerful connections which could protect him in Mogadishu. He has no close family connections in southern or central Somalia and, in any case, he arrived in the United Kingdom in 1988, when he was nineteen years old. He has therefore spent the last 22 years in the United Kingdom and he has no experience of living under al-Shabaab's repressive regime. Consequently, the Court considers that he would be at real risk of Article 3 ill-treatment were he to seek refuge in an area under al-Shabaab's control. Likewise, there would be a real risk he would be subjected to Article 3 ill-treatment if he were to seek refuge either in the Afgooye Corridor or in the Dadaab camps. *[paras. 212 through 218, 226, 230 through 234, 303, 309 and 310]*
Ahorugeze v. Sweden No.: 37075/09 Type: Judgment Date: 27 October 2011 Articles: N: 3, 6, 39 Keywords: – extradition (grounds for refusal) – ill-treatment Links: English only	*Circumstances:* Extradition of a Rwandan national from Sweden to Rwanda for the purposes of prosecution for genocide, murder, extermination and involvement with a criminal gang, allegedly committed during the genocide in Rwanda in 1994. The Swedish Government decided to extradite the applicant in respect of genocide and crimes against humanity. Interim measure complied with. *Relevant complaints:* 1. The applicant was suffering from heart problems and would have to undergo heart bypass surgery in a few years; there was a serious risk that he would not be able to get that surgery in Rwanda. 2. The applicant risked persecution because he is a Hutu.

Translations: German, Icelandic, Russian	3. The conditions in Rwandan detention and imprisonment would violate the applicant's rights under Article 3 of the Convention. While the Rwandan authorities had stated that he would serve a possible prison sentence at Mpanga Prison, nothing prevented the Rwandan authorities from placing him in another prison; the Swedish Government would not be able to take any measures against such a change. 4. A trial in Rwanda would amount to a flagrant denial of justice. The applicant pointed out the problem of witnesses who were too afraid to come forward, the lack of qualified lawyers that could defend him and asserted that the Rwandan judiciary was not impartial or independent from the executive. The applicant's personal situation was further compounded by the fact that he had given testimony for the defence in several cases that had been or were about to be adjudicated by the ICTR. He was therefore of great interest to the Rwandan authorities. Furthermore, as former head of the Rwandan Civil Aviation Authority, the ruling party in Rwanda, FPR, might want to silence the applicant, believing that he has knowledge of the circumstances surrounding the shooting down on 6 April 1994 of the plane carrying President Habyarimana. *Court's conclusions:* 1. Aliens who are subject to removal cannot, in principle, claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by that State. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to breach of Article 3 of the Convention. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. The threshold for a medical condition to raise an issue under Article 3 of the Convention is a very high one. *[paras. 88 and 89]* 2. No evidence has been submitted or found which gives reason to conclude that there is a general situation of persecution or ill-treatment of the Hutu population in Rwanda. The applicant has not pointed to any particular personal circumstances which would indicate that he risks being subjected to treatment contrary to Article 3 of the Convention due to his ethnicity. *[para. 90]* 3. Given the provisions of the Transfer Law and the repeated assurances by the Rwandan authorities that he would be detained and serve a possible prison sentence at the Mpanga Prison and, temporarily during his trial before the High Court, at the Kigali Central Prison, the applicant's observation that

	the Rwandan authorities would be able to place him in a different prison without the Swedish Government having any means to prevent it must be considered as no more than speculative. There is no evidence in the case that the applicant would face a risk of torture or ill-treatment at the Mpanga Prison or the Kigali Central Prison. *[paras. 91 and 92]* 4. The central issue in the present case is the applicant's ability to adduce witnesses on his behalf and obtain an examination of testimony by the courts that reasonably respect the equality of arms vis-à-vis the prosecution. The respondent Government have submitted that there are no technical obstacles to the use of video-links in Rwanda. In this connection, the Court reiterates that it has previously held that the use of video-link testimony is as such in conformity with Article 6. Furthermore, in view of the legislative changes providing for alternative ways of giving testimony, the Court cannot find any basis for concluding that statements thus made would be treated by the courts in a manner inconsistent with the respect for the equality of arms. The Court finds no reason to conclude that the applicant's ability to adduce witness testimony and have such evidence examined by the courts in Rwanda would be circumscribed in a manner inconsistent with the demands of Article 6 of the Convention. The applicant's claim that there were no qualified lawyers able to defend him in Rwanda is unsubstantiated. Many members of the Rwandan Bar had more than five years' experience, that Rwandan lawyers were obliged to provide pro bono services to indigent persons and that there was a legal framework as well as a budgetary provision for legal aid. Both the ICTR and the respondent Government have pointed to the legal and constitutional guarantees of the judiciary's independence and impartiality. There is no sufficient indication that the Rwandan judiciary lacks the requisite independence and impartiality. It has not been substantiated that the applicant's trial would be conducted unfairly because of his having given testimony for the defence in trials before the ICTR or because of his former position as head of the Rwandan Civil Aviation Authority. It has not been shown that there is a connection between the acts for which the applicant was ordered by gacaca courts in 2008 to pay damages and the acts covered by the charges in Rwanda's extradition request. According to the provisions of the Transfer Law and the statements made by the Rwandan authorities in connection with the extradition request, extradited genocide suspects – including the applicant – will have their criminal liability tried by the High Court and the Supreme Court and not by the gacaca courts. The Court notes that Sweden has declared itself prepared to monitor the proceedings in Rwanda and the applicant's detention. *[paras. 120 and 122 through 127]*
Mokallal v. Ukraine No.: 19246/10	*Circumstances:* Extradition of an asylum seeker from Ukraine to Iran for the purposes of prosecution for embezzlement. Several months after the applicant's arrest in Ukraine on the basis of an Iranian arrest

Type: Judgment Date: 10 November 2011 Articles: Y: 5§1; N: 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	warrant, Iran informed that the applicant's detention was no longer required, due to a friendly settlement which had been reached between the applicant and one of the aggrieved parties in the case. *Relevant complaint:* The applicant's detention was not lawful because the law should not have permitted his extradition while his application for refugee status was pending. *Court's conclusions:* As to the applicant's argument that his detention served no purpose, as he could not be extradited prior to examination of his application for refugee status, the Court notes that it has consistently held that the existence of circumstances that under domestic law exclude extradition of a person render any detention for the purpose of extradition unlawful and arbitrary. The Ukrainian legislation establishes a total ban on extradition or expulsion of Ukrainian nationals. In addition to this, under the Refugee Act refugees may not be expelled or forcibly returned to particular countries. The Court has previously found a violation of Article 5§1 of the Convention when the authorities applied detention for the purpose of extradition to a Ukrainian national and to a refugee. In the former case, however, extradition had been excluded from the outset due to the applicant's nationality, while in the latter it became arbitrary from the moment the decision on granting the applicant refugee status became final and binding. In contrast with the cases mentioned, in the instant case no decision on granting the applicant refugee status had been taken either prior to or during his detention. The ongoing examination of the applicant's request for refugee status did not exclude the possibility that he might later be extradited. The Court notes that the examination of any risks and objections linked to the person's possible removal from the territory of the State is intrinsic to actions "taken with a view to deportation or extradition". Even if such an examination establishes that such risks and objections are well-founded and capable of preventing the person's removal, such a possible future outcome cannot in itself retroactively affect the lawfulness of the detention pending examination of a request for extradition. All that is required under 5§1(f) is that "action is being taken with a view to deportation or extradition". Given that throughout this period of detention it was the authorities' intention to extradite the applicant, and that there was no legal or factual impediment to ultimate extradition, the detention cannot be considered unlawful or arbitrary within the meaning of Article 5§1 of the Convention. *[paras. 42 and 43]* *Court's conclusions as to the lawfulness of the applicant's detention between 12 and 14 July 2010 (for reasons not mentioned by the applicant):* Some delay in implementing a decision to release a detainee is understandable, and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep this to a minimum. Administrative formalities connected with release cannot justify a delay of

	more than a few hours. It is for the Contracting States to organise their legal system in such a way that their law-enforcement authorities can meet the obligation to avoid unjustified deprivation of liberty. In the present case it took the domestic authorities two days to arrange for the applicant's release after they had received notification that the applicant's extradition was no longer required. The respondent State should have deployed all modern means of communication of information to keep to a minimum the delay in implementing the decision to release the applicant *[NOTE: The complaint and the Court's conclusions regarding lawfulness of the applicant's custody within the domestic legal framework that existed prior to 17 June 2010 are similar to the Court's previous decision in Soldatenko v. Ukraine already summarized above and, therefore, have not been included in this summary.]*
Al Hanchi v. Bosnia and Herzegovina No.: 48205/09 Type: Judgment Date: 15 November 2011 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: Bosnian, German	*Circumstances:* Expulsion of a Tunisian asylum-seeker from Bosnia-Herzegovina to Tunisia for national security reasons (the applicant had joined the foreign mujahedin during the 1992-95 war in former Yugoslavia). *Relevant complaints:* The applicant's deportation to Tunisia would expose him to the risk of ill-treatment as an Islamist and a suspected terrorist because of his association with the foreign mujahedin in Bosnia and Herzegovina, the fact that he had been declared a threat to national security in Bosnia and Herzegovina and his long beard. Islamists and suspected terrorists were, as a group, systematically exposed to serious violations of fundamental human rights, including ill-treatment, in Tunisia. *Court's conclusions:* As noted by the Parliamentary Assembly of the Council of Europe and UN Special Rapporteurs, the process of democratic transition in Tunisia is in progress and steps have already been taken to dismantle the oppressive structures of the former regime and put in place elements of a democratic system: notably, security forces widely accused of human-rights abuses during the former regime, including the State Security Service, were dissolved; an amnesty was granted to all political prisoners, including those who had been held under the controversial anti-terrorism law; and a number of high- and mid-ranking officials from the Ministry of Interior and the Ministry of Justice were dismissed and/or prosecuted for past abuses. While it is true that cases of ill-treatment are still reported, those are sporadic incidents; there is no indication, let alone proof, that Islamists, as a group, have been systematically targeted after the change of regime. On the contrary, all the main media have reported that Mr Rachid Ghannouchi, a leader of the principal Tunisian Islamist movement (Ennahda), was able to return to Tunisia after twenty or so years in exile and that on 1 March 2011 the movement in question was allowed to register as a political party. It should also be emphasised that on 29 June 2011 Tunisia acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or

	Degrading Treatment or Punishment, setting up a preventive system of regular visits to places of detention, as well as to the Optional Protocol to the International Covenant on Civil and Political Rights, recognising the competence of the Human Rights Committee to consider individual cases. This shows the determination of the Tunisian authorities to once and for all eradicate the culture of violence and impunity which prevailed during the former regime. There is thus no real risk that the applicant, if deported to Tunisia, would be subjected to ill-treatment. *[paras. 43, 44 and 45]*
A. H. Khan v. United Kingdom No.: 6222/10 Type: Judgment Date: 20 December 2011 Articles: N: 8 Keywords: – asylum – expulsion – family life (separation of family) Links: English only Translations: not available	*Circumstances:* Expulsion of a Pakistani national from the United Kingdom to Pakistan following his conviction in the United Kingdom and refusal of asylum. The applicant's mother and siblings are naturalised British citizens. *Relevant complaints:* The applicant's expulsion would violate his right to a family life, given the presence and nationality of his family in the United Kingdom as well as the ill health of his mother. The applicant further claimed to have a relationship with a British national. The applicant maintained that he had no ties to Pakistan and no surviving relatives there. *Court's conclusions:* An interference with a person's private or family life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned. The relevant criteria to be applied, in determining whether an interference is necessary in a democratic society, are: the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; whether there are children of the marriage, and if so, their age; the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled; the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination. The applicant had a long history of offences. The offence which led to the applicant's deportation was of a very considerable seriousness. He was convicted of a further driving offence in 2006. The Court is of the view that the applicant's lapse into re-offending, so soon after his release from prison, demonstrates that his conviction and lengthy term of imprisonment did not have the desired

	rehabilitative effect and that the domestic authorities were entitled to conclude that he continued to present a risk to the public. The applicant's conduct subsequent to the deportation offence renders all the more compelling the Government's reasons for deporting him. As regards the applicant's relationship with his children and their mothers, the Court notes that, as predicted by the Tribunal, neither woman chose to accompany the applicant to Pakistan and both remain in the United Kingdom with their children. The extent of the applicant's relationship with his children and their mothers was limited even at the time of his deportation, given that he had not lived with them since 1999 or seen the children since 2000. The applicant had not seen his children in the ten years prior to his deportation and the eldest child would only have been aged four the last time he or she had seen his or her father. There was also some doubt as to whether the applicant fulfilled a positive role in his children's lives, given that four of the six had, at various times, been on the social services' "at risk" register. Given the length of time since the applicant last had face-to-face contact with his children, as a result of his offending and consequent imprisonment, and the lack of evidence as to the existence of a positive relationship between the applicant and his children, the Court takes the view that the applicant has not established that his children's best interests were adversely affected by his deportation. Unlike his younger brother, the applicant returned to Pakistan for visits following his arrival in the United Kingdom and also married there. In the absence of any evidence to the contrary, the Court assumes that this marriage is still, legally at least, subsisting. The applicant therefore maintained some level of connection to his country of origin and was not deported as a stranger to the country. As regards his ties to the United Kingdom, the Court has addressed the question of his family life, both with his parents and siblings and with his various partners and children, and found it to be limited in its extent. Furthermore, the applicant's private life in the United Kingdom, as observed by the Tribunal, has been constrained by his convictions and spells in prison. Whilst he was mainly educated in the United Kingdom and has worked, he does not appear to have established a lengthy or consistent employment history. Despite the length of his stay, the applicant did not achieve a significant level of integration into British society. Having regard to his substantial offending history, including offences of violence and recidivism following the commencement of deportation proceedings against him, the Court is of the view that his private and family life in the United Kingdom were not such as to outweigh the risk he presented of future offending and harm to the public and his deportation was therefore proportionate to the legitimate aim of preventing crime. *[paras. 33, 36, 38, 40 and 41]*
J. H. v. United Kingdom No.: 48839/09	*Circumstances:* Expulsion of an Afghan national from the United Kingdom to Afghanistan after having been denied asylum. The applicant's father was politically active in the Communist People's Democratic

Type: Judgment Date: 20 December 2011 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	Party of Afghanistan (PDPA), while his older brother obtained asylum in the United Kingdom, based on the risk to him as the son of a high-ranking member of the PDPA. *Relevant complaint:* The applicant's expulsion to Afghanistan would expose him to a real risk of ill-treatment due to the high and visible profile of his father in Afghanistan as a result of his involvement with the PDPA Government until its overthrow in 1992. *Court's conclusions*: The Court has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence. The Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return. The applicant has never claimed to have had any personal political involvement in Afghanistan, nor has he claimed that he has an individual profile there unconnected to his relationship with his father. Furthermore, the applicant has not claimed that he has ever had any role in, or knowledge of, his father's political activities. The applicant has failed to adduce evidence capable of demonstrating that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 if removed to Afghanistan having particular regard to, *inter alia*, the lack of any evidence that the applicant's father still has any profile in Afghanistan; the length of time that has elapsed since his father, in any event, had left Afghanistan; the applicant's lack of individual profile in Afghanistan; and, critically, the absence of any recent evidence to indicate that family members of PDPA members would be at risk in Afghanistan in the present circumstances prevailing there. *[paras. 54, 57, 61, 66]*
Yoh-Ekale Mwanje v. Belgium No.: 10486/10 Type: Judgment Date: 20 December 2011 Articles: Y: 3, 5§1(f), 13; N: 3 Keywords: – custody (lawfulness) – expulsion	*Circumstances:* Expulsion of a Cameroonian National from Belgium to Cameroon. The applicant, who suffered from an advanced stage of HIV infection, was detained several months in a closed centre pending expulsion and was denied her application for a leave to remain in Belgium on medical grounds. Interim measure complied with. *Relevant complaints:* 1. The applicant claimed that her situation presented exceptional circumstances and that compelling humanitarian reasons pleaded against her expulsion. The appropriate medical treatment for her condition was not available in Cameroon.

– ill-treatment – interim measure Links: French only Translations: not available	2. The applicant argued that the Belgian authorities conducted the expulsion proceeding without assessing the real risk she ran in Cameroon of being subjected to treatment contrary to Article 3 of the Convention. 3. The applicant argued that her deprivation of liberty was unlawful according to Belgian legislation, arbitrary, excessively lengthy and disproportionate with regards to the objective pursued by Belgian authorities. *Court's conclusions:* 1. The fact that the applicant's circumstances would be significantly reduced in case of removal is not sufficient in itself to give rise to a breach of Article 3 of the Convention. Article 3 of the Convention does not place an obligation on the Contracting State to alleviate disparities through the provision of free and unlimited health care to all aliens without a right to stay within its jurisdiction. A finding to the contrary would place too great a burden on the Contracting States. More compelling humanitarian issues must be at stake which relate chiefly to the condition of the persons concerned before the decision to expel them is enforced. The applicant is not in a "critical condition" and is fit to travel. The Court cannot consider that the present case is marked by compelling humanitarian reasons. *[paras. 82 and 83]* 2. The Court notes that the only assessment of the possible risk under Article 3 of the Convention was made in the context of the proceedings concerning the applicant's request for leave to remain on medical grounds. The decision refusing to accept the applicant's regularisation on medical grounds is based on an opinion of a medical officer who listed information and considerations of a general nature and ignored the type of treatment the applicant required. The Court can only note that the Belgian authorities dispensed with a careful and thorough examination of the applicant's individual situation before concluding that no risk would arise under Article 3 of the Convention if she were deported to Cameroon and continuing with the expulsion procedure. The applicant was therefore deprived of an effective remedy. *[paras. 106 and 107]* 3. The fact that the implementation of an interim measure temporarily prevents the pursuit of the expulsion procedure does not make a detention unlawful, provided that expulsion is still being considered by the authorities and that the extension of detention is not unreasonable. If the ordering of an interim measure has no incidence as such on the lawfulness of detention, the latter cannot be based on the likelihood of the Court's delivering its ruling within the time-laid down by the Belgian legislation. While acknowledging that the time-limit for detention has not been exceeded, the Court notes that the authorities knew the applicant's identity, that she resided at a fixed address known to

	the authorities, that she had always attended as instructed and that she had taken steps to regularise her situation. The applicant was HIV-positive and her health condition had deteriorated during her detention. The Court sees no link between the applicant's detention and the pursued objective of the Government to have her expelled. *[paras. 120, 123, 124 and 125]*
Zandbergs v. Latvia No.: 71092/01 Type: Judgment Date: 20 December 2011 Articles: Y: 5§3, 5§4; N: 6§1 Keywords: – custody (length) – extradition (custody) – extradition (rule of speciality) – rule of speciality Links: English only Translations: not available	*Circumstances:* Extradition from the United States to Latvia for the purposes of criminal prosecution. *Relevant complaints:* 1. The applicant complained about the refusal of the Latvian courts to consider the time he had spent in custody in the United States pending extradition to Latvia as a part of his detention on remand in Latvia. 2. The applicant alleged that his right to a fair trial was breached in that the Latvian authorities did not properly obtain a consent from the United States authorities to put him on trial for murder. *Court's conclusions:* 1. Neither Article 5§3 nor any other provision of the Convention creates a general obligation for a State party to take into account the length of a pre-trial detention suffered in a third State. *[para. 63]* 2. On 17 December 1999 the acting Secretary of State of the United States expressly approved the applicant's deportation *[sic]* to Latvia on the charge of aggravated murder. The Court observes that all three levels of Latvian jurisdiction examined this issue and found this approval to be sufficient to put the applicant on trial. The Court itself does not find this conclusion unreasonable; in this respect, it reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of national legislation. *[para. 82]*
Ananyev and others v. Russia Nos.: 42525/07 & 60800/08 Type: Judgment Date: 10 January 2012 Articles: Y: 3 Keywords: – ill-treatment Links: English only Translations: Armenian	*Circumstances:* No direct connection with mutual judicial cooperation in criminal matters (purely domestic criminal proceedings), relevant for assessing real risk of violation of Article 3 of the Convention. *Relevant complaints:* 1. Unsatisfactory conditions of detention in remand prisons represented a structural problem in Russia. Repeated applications to the Court in connection with this issue proved the existence and reality of the problem. Although the Russian authorities had undertaken some insignificant and sporadic measures to improve the conditions, those measures had proved to be insufficient owing to inadequate financing and the extensive use of custodial measures as a means of prevention. 2. The applicants complained under Article 3 of the Convention that they had been detained at remand prisons IZ-67/1 (Mr Ananyev) and IZ-30/1 (Mr Bashirov) in conditions that had been so harsh as to constitute inhuman and degrading treatment in breach of this provision.

	Court's conclusions: 1. For the time being the Russian legal system does not dispose of an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint about inadequate conditions of detention. *[para. 119]* 2. Ill-treatment that attains a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 of the Convention. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 of the Convention. Whereas the provision of four square metres remains the desirable standard of multi-occupancy accommodation, the Court has found that where the applicants have at their disposal less than three square metres of floor surface, the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3 of the Convention. In deciding whether or not there has been a violation of Article 3 of the Convention on account of the lack of personal space, the Court has to have regard to the following three elements: (a) each detainee must have an individual sleeping place in the cell; (b) each detainee must dispose of at least three square meters of floor space; and (c) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items. The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3 of the Convention. Even in cases where a larger prison cell was at issue – measuring in the range of three to four square meters per inmate – the Court found a violation of Article 3 of the Convention since the space factor was coupled with the established lack of ventilation and lighting. Special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. Restrictions on access to natural light and air owing to the fitting of metal shutters seriously aggravated the situation of prisoners in an already overcrowded cell and weighed heavily in favour of a violation of Article 3 of the Convention. *[paras. 140, 143, 145, 148, 149, 150 and 154]*

Harkins and Edwards v. United Kingdom Nos.: 9146/07 & 32650/07 Type: Judgment Date: 17 January 2012 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: German, Icelandic	*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 Complaints:* If extradited from the United Kingdom, they would the applicants would be at risk of the death penalty or of sentences of life imprisonment without parole, which were incompatible with Article 3 of the Convention. *Court's Conclusions:* The assurances provided by the Government of the United States, the prosecution in Florida and Judge Weatherby are clear and unequivocal and must be accorded presumption of good faith. The assurances provided by the Assistant State Attorneys make clear that the prosecution will not seek the death penalty. Moreover, Judge Weatherby's order makes it clear that there is no risk of any death penalty sentencing phase being conducted in this case, still less that any sentencing case will result in the imposition of the death penalty. Consequently, the Court finds that the assurances provided by the Florida authorities, when taken with the assurance contained in the Diplomatic Note, are sufficient to remove any risk that the first applicant would be sentenced to death if extradited and convicted as charged. the *Chahal* ruling (as reaffirmed in *Saadi*) should be regarded as applying equally to extradition and other types of removal from the territory of a Contracting State and should apply without distinction between the various forms of ill-treatment which are proscribed by Article 3 of the Convention. The absolute nature of Article 3 of the Convention does not mean that any form of ill-treatment will act as a bar to removal from a Contracting State. Treatment which might violate Article 3 of the Convention because of an act or omission of a Contracting State might not attain the minimum level of severity which is required for there to be a violation of Article 3 of the Convention in an expulsion or extradition case. For example, a Contracting State's negligence in providing appropriate medical care within its jurisdiction has, on occasion, led the Court to find a violation of Article 3 of the Convention but such violations have not been so readily established in the extra-territorial context. In the context of ill-treatment of prisoners, the following factors, among others, have been decisive in the Court's conclusion that there has been a violation of Article 3 of the Convention: the presence of premeditation; that the measure may have been calculated to break the applicant's resistance or will; an intention to debase or humiliate an applicant, or, if there was no such intention, the fact that the measure was implemented in a manner which nonetheless caused feelings of fear, anguish or inferiority; the absence of any specific justification for the measure imposed; the arbitrary punitive nature of the measure; the length of time for which the measure was

	imposed; and the fact that there has been a degree of distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. All of these elements depend closely upon the facts of the case and so will not be readily established prospectively in an extradition or expulsion context. In a removal case, a violation would arise if the applicant were able to demonstrate that he or she was at a real risk of receiving a grossly disproportionate sentence in the receiving State. However, the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States. Due regard must be had for the fact that sentencing practices vary greatly between States and that there will often be legitimate and reasonable differences between States as to the length of sentences which are imposed, even for similar offences. The Court therefore considers that it will only be in very exceptional cases that an applicant will be able to demonstrate that the sentence he or she would face in a non-Contracting State would be grossly disproportionate and thus contrary to Article 3 of the Convention. *[paras. 86, 128, 129, 130 and 134]*
Othman (Abu Qatada) v. United Kingdom No.: 8139/09 Type: Judgment Date: 17 January 2012 Articles: Y: 6; N: 3, 5 Keywords: – assurances – asylum – expulsion – fair trial – ill-treatment Links: English, French (extracts) Translations: Albanian, Arabic, Armenian, Azerbaijani, Bosnian, Bulgarian, Croatian, Georgian, German, Greek, Hungarian, Icelandic, Macedonian,	*Circumstances:* Expulsion of a Jordanian national from the United Kingdom to Jordan. The applicant is on the UN's Al-Qaida Sanctions Committee's list of individuals affiliated with the Al-Qaida. He had been convicted twice in absentia in Jordan for conspiracy to carry out bomb attacks on the American School and on the Jerusalem Hotel in Amman. The Jordanian authorities requested the applicant's extradition from the United Kingdom. In early 2000, the request was withdrawn by Jordan. In the autumn of 2000 the applicant was again tried *in absentia* in Jordan, this time for conspiracy to cause explosions at western and Israeli targets in Jordan The United Kingdom and Jordan negotiated a Memorandum of Understanding (MOU), setting out a series of assurances of compliance with international human rights standards, which would be adhered to when someone was returned to one State from the other. Interim measure complied with. *Relevant complaints:* 1. The applicant would be at real risk of being subjected to torture or ill-treatment if deported to Jordan and that, as a matter of law, proper regard had to be given to the international community's criticism of assurances. The applicant relied on the evidence, which, he submitted, demonstrated that Jordanian prisons were beyond the rule of law. The nature of the monitoring provided for by the terms of reference agreed under the MOU was also limited. 2. It was incompatible with Article 3 of the Convention taken in conjunction with Article 13 of the Convention for SIAC, in order to establish the effectiveness of the assurances given by Jordan, to rely upon material which was not disclosed to the applicant.

Montenegrin, Romanian, Russian, Spanish, Turkish, Ukrainian	3. If deported, the applicant would be at real risk of a flagrant denial of his right to liberty as guaranteed by Article 5 of the Convention due to the possibility under Jordanian law of incommunicado detention for up to 50 days and would be denied legal assistance during any such detention. If convicted at his re-trial, any sentence of imprisonment would be a flagrant breach of Article 5 of the Convention as it would have been imposed as a result of a flagrant breach of Article 6 of the Convention. 4. The applicant would be at real risk of a flagrant denial of justice if retried in Jordan for either of the offences for which he has been convicted *in absentia*. The confessions of Al-Hamasher and Abu Hawsher were the predominant basis for his convictions at the original trials and these men and some of the other defendants at each trial had been held incommunicado, without legal assistance and tortured. The use of torture evidence was a flagrant denial of justice. *Court's conclusions:* 1. In assessing the practical application of assurances and determining what weight is to be given to them, the preliminary question is whether the general human rights situation in the receiving State excludes accepting any assurances whatsoever. However, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances. More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving State's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors: (i) whether the terms of the assurances have been disclosed to the Court; (ii) whether the assurances are specific or are general and vague; (iii) who has given the assurances and whether that person can bind the receiving State; (iv) if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them; (v) whether the assurances concerns treatment which is legal or illegal in the receiving State; (vi) whether they have been given by a Contracting State; (vii) the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances; (viii) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers; (ix) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible; (x) whether the applicant has previously been ill-treated in the receiving State; and (xi) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State. The Court has never laid down an absolute

	rule that a State which does not comply with multilateral obligations cannot be relied on to comply with bilateral assurances. The extent to which a State has failed to comply with its multilateral obligations is, at most, a factor in determining whether its bilateral assurances are sufficient. Equally, there is no prohibition on seeking assurances when there is a systematic problem of torture and ill-treatment in the receiving State. The United Kingdom and Jordanian Governments have made genuine efforts to obtain and provide transparent and detailed assurances to ensure that the applicant will not be ill-treated upon return to Jordan. The MOU would also appear to be superior to any assurances examined by the United Nations Committee Against Torture and the United Nations Human Rights Committee. The MOU is specific and comprehensive. It addresses directly the protection of the applicant's Convention rights in Jordan. The assurances must be viewed in the context in which they have been given. The Court considers that there is sufficient evidence for it to conclude that the assurances were given in good faith by a Government whose bilateral relations with the United Kingdom have, historically, been very strong. Moreover, they have been approved at the highest levels of the Jordanian Government, having the express approval and support of the King himself. Thus, it is clear that, whatever the status of the MOU in Jordanian law, the assurances have been given by officials who are capable of binding the Jordanian State. All of these factors make strict compliance with both the letter and spirit of the MOU more likely. Similarly, although the applicant has argued that his high profile would place him at greater risk, the Court is unable to accept this argument, given the wider political context in which the MOU has been negotiated. It considers it more likely that the applicant's high profile will make the Jordanian authorities careful to ensure he is properly treated; the Jordanian Government is no doubt aware that not only would ill-treatment have serious consequences for its bilateral relationship with the United Kingdom, it would also cause international outrage. *[paras. 188, 189 and 193 through 196]* 2. The Court does not consider there is any support in its case-law for the applicant's submission that there is an enhanced requirement for transparency and procedural fairness where assurances are being relied upon; as in all Article 3 cases, independent and rigorous scrutiny is what is required. Article 13 of the Convention cannot be interpreted as placing an absolute bar on domestic courts receiving closed evidence, provided the applicant's interests are protected at all times before those courts. In the present case, at least insofar as the issue of the risk of ill-treatment in Jordan was concerned, no case was made against the applicant before SIAC. Instead, he was advancing a claim that there would be a real risk of ill-treatment if he were deported to Jordan. In the Court's view, there is no evidence that, by receiving closed evidence on that issue, SIAC, assisted by the special

	advocates, failed to give rigorous scrutiny to the applicant's claim. Nor is the Court persuaded that, by relying on closed evidence, SIAC ran an unacceptable risk of an incorrect result: to the extent that there was such a risk, it was mitigated by the presence of the special advocates. Even assuming that closed evidence was heard as to the United States' interest in him, the GID's commitment to respecting the assurances and the Foreign and Commonwealth Office's negotiation of the MOU, the Court considers that these issues are of a very general nature. There is no reason to suppose that, had the applicant seen this closed evidence, he would have been able to challenge the evidence in a manner that the special advocates could not. *[paras. 219, 223 and 224]* 3. It is possible for Article 5 of the Convention to apply in an expulsion case. Hence, the Court considers that a Contracting State would be in violation of Article 5 of the Convention if it removed an applicant to a State where he or she was at real risk of a flagrant breach of that Article. However, as with Article 6 of the Convention, a high threshold must apply. A flagrant breach of Article 5 of the Convention would occur only if, for example, the receiving State arbitrarily detained an applicant for many years without any intention of bringing him or her to trial. A flagrant breach of Article 5 of the Convention might also occur if an applicant would be at risk of being imprisoned for a substantial period in the receiving State, having previously been convicted after a flagrantly unfair trial. The Court finds that there would be no real risk of a flagrant breach of Article 5 of the Convention in respect of the applicant's pre-trial detention in Jordan, as Jordan clearly intends to bring the applicant to trial and must do so within fifty days' of his being detained. Fifty days' detention falls far short of the length of detention required for a flagrant breach of Article 5 of the Convention and, consequently, there would be no violation of this Article if the applicant were deported to Jordan. *[paras. 233 and 235]* 4. In the Court's case-law, the term "flagrant denial of justice" has been synonymous with a trial which is manifestly contrary to the provisions of Article 6 of the Convention or the principles embodied therein. Although it has not yet been required to define the term in more precise terms, the Court has nonetheless indicated that certain forms of unfairness could amount to a flagrant denial of justice. These have included: conviction in absentia with no possibility subsequently to obtain a fresh determination of the merits of the charge; a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality the detention reviewed; deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country. A flagrant denial of justice 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 itself. What is required is a breach of the principles of fair trial guaranteed by Article 6 of the Convention which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article. In assessing whether this test 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. The Court has found that a flagrant denial of justice will arise when evidence obtained by torture is admitted in criminal proceedings. The applicant has demonstrated that there is a real risk that Abu Hawsher and Al-Hamasher were tortured into providing evidence against him and the Court has found that no higher burden of proof can fairly be imposed upon him. Having regard to these conclusions, the Court finds that there is a real risk that the applicant's retrial would amount to a flagrant denial of justice. *[paras. 259, 260, 261 and 282]*
M. S. v. Belgium No.: 50012/08 Type: Judgment Date: 31 January 2012 Articles: Y: 3, 5§1, 5§4 Keywords: – custody (judicial review) – custody (lawfulness) – expulsion – ill-treatment Links: French only Translations: not available	*Circumstances:* Expulsion procedure initiated by Belgium against an Iraqi national, suspected of having links with terrorism, following his serving a sentence of imprisonment. After his release from prison, the applicant was detained from October 2007 to March 2009 in a closed transit centre for illegal aliens on the basis of an order to leave the territory. During his detention, he applied for refugee status which he was denied although the Aliens Appeals Board (AAB) noted that, if expelled to Iraq, the applicant ran the risk of being exposed to ill-treatment. Placed under a residence order between March 2009 and April 2010, the applicant was once again detained from April 2010 to October 2010 when he eventually was repatriated to Iraq. Prior to his repatriation, Belgian authorities had attempted to have the applicant removed to a third country. *Relevant complaints:* 1. The applicant claimed that he was returned to Iraq where he was exposed to ill-treatment. He argued that his return had not been voluntary and that the pressure under which he was placed by Belgian authorities was such that he the only possibility he could envisage was to return to Iraq. 2. Because his asylum application was still pending and because Belgian authorities knew that his expulsion to Iraq was not possible in light of the risk of ill-treatment he ran in that country, the applicant claimed that his first period of detention had been arbitrary as he could not be considered as an alien against whom action was being taken with a view to expulsion.

	3. The applicant claimed his second period of detention was unlawful as it could not be considered that Belgian authorities were pursuing his expulsion with the diligence required by the Court. He further argued that he was given no information as to why he had once again been detained and was therefore deprived of the possibility to challenge its lawfulness. *Court's conclusions:* 1. To be valid, the waiving of certain procedural safeguards must be surrounded by sufficient guarantees in order to ensure that the renunciation was freely expressed. In the present case, the applicant was placed before one of the following choices: to stay in Belgium with no hope of obtaining the right to reside there legally and no perspective of living there in freedom, returning to Iraq with the risk of being arrested there and exposed to ill-treatment; or going to a third country which turned out to be unrealisable. The applicant cannot be considered as having validly waived his right to the protection guaranteed under Article 3 of the Convention and his return to Iraq must be considered to be a forced return. Even in the most difficult circumstances, such as the fight against terrorism, and whatever the acts of the person concerned may have been, the Convention prohibits torture in absolute terms. It is therefore not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion. In the present case, the existence of serious and established grounds for believing that there was a real risk of treatment contrary to Article 3 of the Convention is not disputed. Belgian authorities should have accompanied the applicant's return by a series of safeguards with a view to ensuring his security, among which the most important is seeking diplomatic assurances from the concerned State's authorities. By failing to take such action, Belgian authorities did not do all that could reasonably be expected from them with regard to the Convention. *[paras. 124 through 127, 129 and 131]* 2. An expulsion procedure cannot be considered as being underway when the authorities have no perspective of expelling the persons concerned during the time of their detention without exposing them to a real risk of ill-treatment. Detention on the sole ground of national security does not fit within the confines of Article 5§1(f) of the Convention. The Court considers that the applicant was detained according to a procedure prescribes by law and has no reason to doubt that national authorities were considering expulsion and had a realistic perspective to achieve expulsion in case the application for asylum was denied. The situation must be analysed differently from the date the General Commission for refugees and stateless people (CGRA) issued its opinion on the risks faced by the applicant if expelled to Iraq. From that moment on, the applicant was only held in custody for security reasons,

	since the authorities could not proceed with his expulsion without breaching their obligations with regard to the Convention. *[paras. 150, 151, 153, 154 and 155]* 3. The order to leave the territory on the basis of which the applicant was detained refers to the circumstance that the Aliens Office (OE) was awaiting an opinion from the CGRA regarding the persistence of the risks faced by the applicant if expelled to Iraq. If the Court is willing to see that step as a necessary precondition to the applicant's expulsion, it cannot conceive that such a step may in itself be considered as an action taken with a view to expulsion within the meaning of Article 5§1(f) of the Convention. The situation is different from the moment the Belgian authorities established diplomatic contacts to find a third State willing to welcome the applicant until the moment when the applicant refused to be removed to Burundi. In light of the failure of the steps taken with a view to finding a third State, the absence of any further steps in that connection and the new opinion from the CGRA confirming the risks faced by the applicant if returned to Iraq, the Court can only but note the absence of a connection between the detention of the applicant and the possibility of removing him from Belgian territory. *[paras. 175, 177 and 179]*
Al Husin v. Bosnia and Herzegovina No.: 3727/08 Type: Judgment Date: 7 February 2012 Articles: Y: 3, 5§1; N: 5§1 Keywords: – custody (lawfulness) – expulsion – ill-treatment Links: English only Translations:Bosnian	*Circumstances:* Deportation of a Syrian national from Bosnia-Herzegovina to Syria because of his association with the mujahedin terrorist organization. *Relevant complaints:* The applicant maintained that he would be perceived by the Syrian authorities as a member of the outlawed Muslim Brotherhood (in view of his involvement in rallies organised by that organisation in the 1980s) or as an Islamist (given his association with the mujahedin movement advocating the Saudi-inspired Wahhabi/Salafi version of Islam). He claimed that the Syrian authorities were aware of his activities in BH, as he had always been outspoken about them (for example, he had given a number of interviews to the Al Jazeera television channel and the Asharq Alawsat newspaper between 1996 and 2001). He referred to the situation of Muhammad Zammar, a mujahedin of Syrian origin, who had reportedly been tortured in Syria and sentenced to twelve years' imprisonment for membership of the Muslim Brotherhood (although no proof of his membership in that organisation had been presented at trial). The applicant claimed that he might also be targeted because of his draft evasion. Given all the above and the general political and human rights situation in Syria, the applicant argued that his deportation to Syria would expose him to a risk of being subjected to ill-treatment. *Court's conclusions*: The domestic authorities did not sufficiently take into account the nature of the mujahedin movement to which the applicant undoubtedly belonged. In the aftermath of the war in Bosnia and Herzegovina the applicant gave a number of interviews to some of the leading Arabic media outlets, revealing his association with the mujahedin movement and advocating the Saudi-inspired

	Wahhabi/Salafi version of Islam. Even assuming that this remained unnoticed by the Syrian authorities, the applicant was again made the centre of attention when he was wrongly identified as convicted terrorist Abu Hamza al-Masri in the US Department of State's Country Report on Terrorism in Bosnia and Herzegovina and arrested there on national security grounds. The Court is of the view that these factors would be likely to make him a person of interest for the Syrian authorities. In fact, the applicant submitted a document issued by the Syrian security services on 16 August 2002 indicating that he should be arrested upon the moment of his entering the country and a document issued by the Syrian armed forces on 15 October 2009 indicating that the security services were holding a file containing information about the applicant. Having regard to the foregoing, to Syria's human rights record and the fact that the situation in Syria has deteriorated since the onset of political protest and civil unrest in March 2011, there is a real risk that the applicant, if deported to Syria, would be subjected to ill-treatment. *[paras. 52, 53 and 54]*
Antwi and others v. Norway No.: 26940/10 Type: Judgment Date: 14 February 2012 Articles: N: 8 Keywords: – expulsion – family life (separation of family) Links: English only Translations: Icelandic	*Circumstances:* Expulsion of a Ghanaian national and his wife, a naturalized Norwegian national, and daughter, Norwegian national by birth. *Relevant complaint:* The Norwegian immigration authorities' decision that the first applicant be expelled to Ghana with a prohibition on re-entry for five years would entail a breach of the rights of all three applicants under Article 8 of the Convention. It would disrupt the relationships between the first and the third applicants in a manner that would have long lasting damaging effects on the latter. *Court's conclusions:* The first applicant's residence in Norway had in no time been lawful. The impugned expulsion and five-year prohibition on re-entry had been imposed on the *first* applicant in view of the gravity of his violations of the Immigration Act (the use of a false identity and making false statements about his nationality). A scheme of implementation of national immigration law which, as here, is based on administrative sanctions in the form of expulsion does not as such raise an issue of failure to comply with Article 8 of the Convention. The public interest in favour of ordering the first applicant's expulsion weighed heavily in the balance when assessing the issue of proportionality under Article 8 of the Convention. The first applicant had grown up in Ghana, where his family lived, and had arrived in Norway at an adult age. His links to Norway could not be said to outweigh those of his home country and had in any event been formed through unlawful residence and without any legitimate expectation of being able to remain in the country. Although the *second* applicant had become a Norwegian citizen and had family ties and employment links to Norway and probably would experience some difficulties in resettling in Ghana, there does not seem to be any particular obstacle preventing her from accompanying the first applicant to their country of origin. The above mentioned factors cannot in

	the Court's view outweigh the public interest in sanctioning the first applicant's aggravated offences against the immigration rules with the impugned measure. The *third* applicant's direct links to Ghana are very limited, having visited the country three times and having little knowledge of the languages practiced there. However, both parents having been born and brought up in Ghana and having visited the country three times with their daughter, there were no insurmountable obstacles in the way of the applicants settling together in Ghana or, at the least, to maintaining regular contacts. *[paras. 89, 90, 92, 93, 94 and 98]*
Hirsi Jamaa and Others v. Italy No.: 27765/09 Type: Judgment [GC] Date: 23 February 2012 Articles: Y: 3, 4 (Prot. 4), 13 Keywords: – expulsion – ill-treatment Links: English, French Translations: Albanian, Arabic, Armenian, Azerbaijani, Bosnian, Bulgarian, Croatian, Georgian, German, Greek, Icelandic, Italian, Macedonian, Romanian, Russian, Spanish, Turkish, Ukrainian Chamber Judgment: not available (jurisdiction relinquished by the Chamber to the Grand Chamber)	*Circumstances:* Transfer (de facto expulsion) of eleven Somali nationals and thirteen Eritrean nationals from Italy to Libya. The applicants were part of a group of about two hundred individuals who left Libya aboard three vessels with the aim of reaching the Italian coast. The vessels were intercepted by Italian Revenue Police and Coastguard ships on the high seas, the irregular migrants transferred onto them and returned to Libya under the 2007 bilateral cooperation agreement between Italy and Libya on the fight against clandestine immigration. *Relevant complaint:* The applicants were exposed to the risk of torture or inhuman or degrading treatment in Libya and in their respective countries of origin, namely, Eritrea and Somalia, as a result of having been returned by Italy to Libya. *Court's conclusions:* Italy cannot evade its own responsibility by relying on its obligations arising out of bilateral agreements with Libya. Even if it were to be assumed that those agreements made express provision for the return to Libya of migrants intercepted on the high seas, the Contracting States' responsibility continues even after their having entered into treaty commitments subsequent to the entry into force of the Convention or its Protocols in respect of these States. *[para. 129]*
Samaras and Others v. Greece No.: 11463/09 Type: Judgment Date: 28 February 2012 Articles: Y: 3 Keyword: – ill-treatment	*Circumstances:* Conditions of detention of twelve Greek nationals and one Somali national in the Greek prison of Ioannina. *Relevant complaint:* The applicants claimed that the conditions of detention did not meet the national and international standards and are therefore likely to cause them serious physical and psychological suffering. They claimed that they lived and slept in confined and overcrowded cells or dormitories with no tables or chairs or free room to move, that they spent 18 hours a day in dormitories where they had

Links: French only Translations: Greek	to stay on their beds and that several of them did not receive treatment for the diseases they suffered from. *Court's conclusions:* Article 3 of the Convention imposes on the State the obligation to ensure that all prisoners are detained in conditions compatible with respect for their human dignity and that the method of execution of the measure does not subject them to distress or to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Recalling that serious prison overpopulation raises an issue under Article 3 of the Convention, the Court cannot however decide how much personal space must be allotted to each prisoner in terms of the Convention, as that issue may rely on many factors, such as the length of the deprivation of liberty, the possibility for outdoor exercise or the mental and physical condition of the prisoner. In cases where overcrowding alone was not such as to raise an issue under Article 3 of the Convention, other aspects of the conditions of detention must be taken into account such as the possibility to use the toilet privately, the ventilation system, the access natural light and air, the quality of heating and the respect for basic sanitary requirements. The Court does not intend to reconsider its jurisprudence according to which elements other than overcrowding or the personal space available for a prisoner may be taken into account when examining compliance with Article 3 requirements. The possibility to move outside of the dormitory is one of those elements. However, such a factor, taken alone, cannot be considered of such importance so as to tip the scales in favour of a finding of non-violation of Article 3 of the Convention. The Court must also weigh the form and the duration of the freedom of movement against the global duration of detention and the general conditions which prevail within the prison. The Court notes that the period of time during which the applicants worked only constituted a limited fraction of the total duration of their imprisonment. *[paras. 56, 57, 59, 63 and 65]*
Atmaca v. Germany No.: 45293/06 Type: Decision Date: 6 March 2012 Articles: N: 3, 6 Keywords: – extradition (procedure) – interim measure Links: English only Translations: German	*Circumstances:* Extradition from Germany to Turkey for the purposes of prosecution of a person who has been active in the PKK (the Kurdistan Workers' Party) and unsuccessfully sought asylum in Germany. Interim measure complied with. Following the application of the interim measure, the German authorities took no final decision whether to extradite the applicant or not. *Relevant complaint:* The applicant complained that he ran a risk of being tortured and being exposed to degrading prison conditions and that he would be convicted in an unfair trial if extradited to Turkey. *Court's conclusions:* The Court regrets that the Ministry's decision on whether or not to authorise the applicant's extradition has apparently been adjourned by reference, *inter alia*, to the Court's decision to indicate to the German Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Turkey until further notice. The application of Rule 39 only aimed at suspending the

	execution of a decision by the domestic authorities to extradite the applicant. It did not prevent the Government from deciding at any moment whether or not the applicant should be extradited. The Court further notes that by the latter decision, the applicant was released from detention pending extradition. He could not, therefore, be extradited immediately, were a decision taken to authorise his extradition. Moreover, the Government have given an undertaking, in case the Court discontinued the application of Rule 39 of the Rules of Court, that the Federal Ministry of Justice (assisted by the Federal Office of Justice) would give the applicant a real opportunity to re-apply to the Court for interim measures in the event that the Federal Office of Justice authorised the applicant's extradition in the future. In these particular circumstances, the applicant cannot currently be considered to be facing a real and imminent risk of being extradited. In view of the foregoing, in particular the undertaking given by the respondent Government, the Court considers that for the above-mentioned reasons, it is currently no longer justified to continue the examination of the application. *[page 16]*
Mannai v. Italy No.: 9961/10 Type: Judgment Date: 27 March 2012 No.: 9961/10 Articles: Keywords: – expulsion – ill-treatment – interim measure Links: French only Translations: Italian	*See the summary of the very similar case of Ben Khemais v. Italy.*
Babar Ahmad and Others v. United Kingdom (Judgment) Nos.: 24027/07, 11949/08, 36742/08, 66911/09 & 67354/09 Type: Judgment Date: 10 April 2012 Articles: N: 3 Keywords:	*NOTE: For the Decision, see above.* *Circumstances:* Extradition of six British nationals and one person of disputed nationality from the United Kingdom to the United States of America for the purposes of prosecution for various terrorist and terrorism-related offences. Interim measure complied with. *Relevant complaints:* 1. If extradited and convicted in the United States, the applicants would be detained at ADX Florence and, furthermore, would be subjected to special administrative measures (SAMS). They submitted

– assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: German, Icelandic	that conditions of detention at ADX Florence (whether alone or in conjunction with SAMS) would violate Article 3 of the Convention. 2. If extradited and convicted, the applicants would face sentences of life imprisonment without parole and/or extremely long sentences of determinate length in violation of Article 3 of the Convention. *Court's conclusions:* 1. In order to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the state of health of the victim. For a violation of Article 3 of the Convention to arise from an applicant's conditions of detention, the suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve an element of suffering or humiliation. However, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The Court evaluated the complaint regarding the eventual detention in ADX Supermax specifically with respect to solitary confinement, recreation and outdoor exercise and mental health issues during detention. There is no basis for the applicants' submission that placement at ADX would take place without any procedural safeguards. The Federal Bureau of Prisons applies accessible and rational criteria when deciding whether to transfer an inmate to ADX. Placement is accompanied by a high degree of involvement of senior officials within the Bureau who are external to the inmate's current institution. Their involvement and the requirement that a hearing be held before transfer provide an appropriate measure of procedural protection. There is no evidence to suggest that such a hearing is merely window dressing. Even if the transfer process were unsatisfactory, there would be recourse to both the Bureau's administrative remedy programme and the federal courts, by bringing a claim under the due process clause of the Fourteenth Amendment, to cure any defects in the process. There is nothing to indicate that the United States' authorities would not continually review their assessment of the security risk which they considered the applicants to pose. The Federal Bureau of Prisons has well-established procedures for reviewing an inmate's security classification and

	carrying out reviews of that classification in six-monthly program reviews and three-yearly progress reports. Moreover, the United States' authorities have proved themselves willing to revise and to lift the special administrative measures which have been imposed on terrorist inmates thus enabling their transfer out of ADX to other, less restrictive institutions. It is clear from the evidence submitted by both parties that the purpose of the regime in those units is to prevent all physical contact between an inmate and others, and to minimise social interaction between inmates and staff. This does not mean, however, that inmates are kept in complete sensory isolation or total social isolation. Although inmates are confined to their cells for the vast majority of the time, a great deal of in-cell stimulation is provided through television and radio channels, frequent newspapers, books, hobby and craft items and educational programming. The range of activities and services provided goes beyond what is provided in many prisons in Europe. Where there are limitations on the services provided, for example restrictions on group prayer, these are necessary and inevitable consequences of imprisonment. there are adequate opportunities for interaction between inmates. While inmates are in their cells talking to other inmates is possible, admittedly only through the ventilation system. During recreation periods inmates can communicate without impediment. The isolation experienced by ADX inmates is, therefore, partial and relative. A for the mental health conditions of the applicants, it would not appear that the psychiatric services which are available at ADX would be unable to treat such conditions. *[paras. 201, 202, 203, 220, 222 and 224]* 2. In a sufficiently exceptional case, an extradition would be in violation of Article 3 of the Convention if the applicant faced a grossly disproportionate sentence in the receiving State. Consequently, while, in principle, matters of appropriate sentencing largely fall outside the scope of the Convention, a grossly disproportionate sentence could amount to ill-treatment contrary to Article 3 of the Convention at the moment of its imposition. However, "gross disproportionality" is a strict test and it will only be on "rare and unique occasions" that the test will be met. In a removal (extradition or expulsion) case, a violation would arise if the applicant were able to demonstrate that he or she was at a real risk of receiving a grossly disproportionate sentence in the receiving State. However, the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States. Due regard must be had to the fact that sentencing practices vary greatly between States and that there will often be legitimate and reasonable differences between States as to the length of sentences which are imposed, even for similar offences. The Court therefore considers that it will only be in very exceptional cases that an applicant will be able to demonstrate that the sentence he or she would face in a non-Contracting State would be grossly disproportionate

	and thus contrary to Article 3 of the Convention. For life sentences it is necessary to distinguish between three types of sentence: (i) a life sentence with eligibility for release after a minimum period has been served; (ii) a discretionary sentence of life imprisonment without the possibility of parole; and (iii) a mandatory sentence of life imprisonment without the possibility of parole. The first sentence is clearly reducible and no issue can therefore arise under Article 3 of the Convention. For the second, a discretionary sentence of life imprisonment without the possibility of parole, the Court observes that normally such sentences are imposed for offences of the utmost severity, such as murder or manslaughter. In any legal system, such offences, if they do not attract a life sentence, will normally attract a substantial sentence of imprisonment, perhaps of several decades. Therefore, any defendant who is convicted of such an offence must expect to serve a significant number of years in prison before he can realistically have any hope of release, irrespective of whether he is given a life sentence or a determinate sentence. It follows, therefore, that, if a discretionary life sentence is imposed by a court after due consideration of all relevant mitigating and aggravating factors, an Article 3 issue cannot arise at the moment when it is imposed. Instead, the Court that an Article 3 issue will only arise when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds (such as punishment, deterrence, public protection or rehabilitation); and (ii) the sentence is irreducible *de facto* and *de iure*. For the third sentence, a mandatory sentence of life imprisonment without the possibility of parole, the Court considers that greater scrutiny is required. The vice of any mandatory sentence is that it deprives the defendant of any possibility to put any mitigating factors or special circumstances before the sentencing court. This is no truer than for a mandatory sentence of life imprisonment without the possibility of parole, a sentence which, in effect, condemns a defendant to spend the rest of his days in prison, irrespective of his level of culpability and irrespective of whether the sentencing court considers the sentence to be justified. However, in the Court's view, these considerations do not mean that a mandatory sentence of life imprisonment without the possibility of parole is *per se* incompatible with the Convention, although the trend in Europe is clearly against such sentences. The Court concludes therefore that, in the absence of any such gross disproportionality, an Article 3 issue will arise for a mandatory sentence of life imprisonment without the possibility of parole in the same way as for a discretionary life sentence, that is when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds; and (ii) that the sentence is irreducible *de facto* and *de iure*. While the offences with which these applicants are charged vary, all of them concern involvement in or support for terrorism. Given the seriousness

	of terrorism offences (particularly those carried out or inspired by Al-Qaeda) and the fact that the life sentences could only be imposed on these applicants after the trial judge considered all relevant aggravating and mitigating factors, the Court considers that discretionary life sentences would not be grossly disproportionate in their cases. In respect of a discretionary life sentence, an Article 3 issue will only arise when it can be shown: (i) that the applicant's continued incarceration no longer serves any legitimate penological purpose; and (ii) the sentence is irreducible *de facto* and *de iure*. Given that none of these applicants has been convicted, still less has begun serving any sentences which might be imposed upon conviction. The Court considers that they have not shown that, upon extradition, their incarceration in the United States would not serve any legitimate penological purpose. Indeed, if they are convicted and given discretionary life sentences, it may well be that, as the Government have submitted, the point at which continued incarceration would no longer serve any purpose may never arise. It is still less certain that, if that point were ever reached, the United States' authorities would refuse to avail themselves of the mechanisms which are available to reduce their sentences. Accordingly, the applicants have not demonstrated that there would be a real risk of treatment reaching the threshold of Article 3 as a result of their sentences if they were extradited to the United States. The fifth applicant faces two hundred and sixty-nine counts of murder and thus multiple mandatory sentences of life imprisonment without the possibility of parole. A mandatory life sentence would be grossly disproportionate for such offences, particularly when the fifth applicant has not adduced any evidence of exceptional circumstances which would indicate a significantly lower level of culpability on his part. If he is convicted of these charges, it is difficult to conceive of any mitigating factors which would lead a court to impose a lesser sentence than life imprisonment without the possibility of parole, even if it had the discretion to do so. Moreover, for the reasons it has given in respect of the first, third, fourth and sixth applicants, the Court considers that he has not shown that incarceration in the United States would not serve any legitimate penological purpose. Therefore, he too has failed to demonstrate that there would be a real risk of treatment reaching the threshold of Article 3 of the Conventin as a result of his sentence if he were extradited to the United States. *[paras. 236 through 244]* *Remark:* The Court decided that it is not in a position to rule on the merits of the third applicant's (Syed Tahla Ahsan) complaints, given his schizophrenia which required him to be transferred to Broadmoor Hospital, particularly in respect of ADX Florence. It requires further submissions from the parties. For that reason, it decided to adjourn the examination of the second applicant's complaints. Those complaints will be considered under a new application number, No. 17299/12.

Balogun v. United Kingdom No.: 60286/09 Type: Judgment Date: 10 April 2012 Articles: N: 3, 8 Keywords: – expulsion – family life (separation of family) – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion from the United Kingdom to Nigeria of a person who lived in the United Kingdom since the age of 3, and following his conviction for a criminal offence in the United Kingdom. Interim measure complied with. *Relevant complaint:* The applicant's expulsion to Nigeria would breach Article 3 of the Convention because of his attempted suicide and the risk of suicide following dismissal of his application to revoke the expulsion. *Court's conclusions:* Aliens who are subject to expulsion cannot in principle claim any right to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by that State, unless such exceptional circumstances pertain as to render the implementation of a decision to remove an alien incompatible with Article 3 of the Convention. The Court emphasises the high threshold for Article 3 of the Convention, which applies with equal force in cases involving a risk of suicide as in other cases. In the light of the precautions to be taken by the Government and the existence of adequate psychiatric care in Nigeria, should the applicant require it, the Court is unable to find that the applicant's deportation would result in a real and imminent risk of treatment of such a severity as to reach this threshold. *[paras. 31 and 34]*
Woolley v. United Kingdom No.: 28019/10 Type: Judgment Date: 10 April 2012 Articles: N: 5§1 Keywords: – extradition (rule of speciality) – rule of speciality Links: English only Translations: not available	*Circumstances:* Following the extradition of the applicant from Switzerland to the United Kingdom for the purpose of the execution of the remainder of the sentence of imprisonment the United Kingdom's authorities enforced not only this sentence was enforced but also imposed further imprisonment in default of payment of a confiscation order that had been part of the original sentence. *Relevant complaint:* The imposition of imprisonment in default of payment of the confiscation order was not lawful as it was in breach of the rule of specialty and was arbitrary as the District Judge acted beyond his powers in ordering the enforcement of the default term. *Court's conclusions:* The default term was an integral part of the confiscation order, which was in turn part of the original sentence and thus does not appear to be unreasonable or arbitrary. The execution of the default term of the confiscation order did not involve the bringing of any new "criminal charge" for the purposes of Article 6§1 of the Convention. In so far as there exists a dispute between the two States concerned regarding whether the specialty rule has been breached, the Court observes that the European Convention on Extradition does not contain a dispute resolution mechanism and considers that it is not for the Court to resolve what is essentially a diplomatic dispute. The applicant did not allege bad faith or an intention to deceive in respect of the United Kingdom authorities. At most, the applicant relies on a misunderstanding by the Swiss authorities of the position of the United Kingdom in the extradition

	proceedings. The Court considers that any such misunderstanding did not render the applicant's detention arbitrary in all the circumstances of the case. *[paras. 83 and 84]*
Molotchko v. Ukraine No.: 12275/10 Type: Judgment Date: 26 April 2012 Articles: Y: 5§1(f), 5§4; N: 5§1(f) Keywords: – asylum – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – interim measure Links: English only Translations: not available	*Circumstances:* Extradition from Ukraine to Belarus, of a person who had obtained first asylum (in respect of Belarus) and then nationality in Germany, for the purposes of criminal prosecution. Application for asylum in Ukraine was refused. Interim measure complied with. *Relevant complaint:* While the applicant's detention in Ukraine before 17 June 2010 had not been based on sufficient legal grounds, the new regulations did not bring his detention after that date into compliance with the Convention requirements. In particular, he argued that the domestic court deciding on the lawfulness of his continued detention had applied the regulations formally and had omitted to deal with the applicant's substantial objections to his extradition. The courts also failed to consider his submissions that he might not be prosecuted on charges of abuse of office, as he had never held any office in Belarus. In this connection, the applicant generally stated that allegations of unlawfulness or arbitrariness of restraint measures chosen by the authorities of the requesting State in the context of criminal proceedings and allegations of unsoundness of criminal charges fell outside the scope of the review by the Ukrainian courts. Furthermore, the courts did not take into consideration the possibility of releasing him from detention under certain conditions, in spite of the lengthy period of his detention. Under the new regulations there was no obligation to inform the person whose liberty was at question, or his lawyer, of a court hearing on the matter, while under the Code of Criminal Procedure a notice of hearing should be given to the prosecutors. The new regulations did not provide for the participation of the persons concerned in the examination of extradition requests by the GPU; such persons were not given sufficient time to prepare and submit appeals against extradition decisions; the regulations did not require the courts to inform the persons of the scheduled hearing concerning their appeals; criteria according to which courts have to assess the lawfulness of extradition decisions were not specified; the courts were not required to verify the accuracy of the prosecutors' findings or to consider the danger for the persons concerned to be subjected to torture or inhuman treatment in the receiving State or the risk of flagrant denial of justice in case of extradition; such danger might only be relied on as a ground for refusing extradition if the person concerned was granted refugee status. Under the new regulations ongoing court proceedings on appeals against extradition decisions did not impede their actual execution. *Court's conclusions:* The law implementing the new regulations contained no transitional arrangements concerning, in particular, their application in respect of persons already in detention on the date of the regulations' entry into force. Thus, it is unclear whether the applicant would have been able to initiate the review procedure provided for in Article 463(9) of the Code of Criminal Procedure before a decision

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

	appeal hearings were attended by the applicant's lawyers and the applicant did not suggest that he had had additional arguments which could not have been raised by his lawyers at those hearings. The Court is not of the view that the national courts deciding on the applicant's detention were required to carry out a separate inquiry into the applicant's objections against his extradition. The Court considers that the courts should not have omitted to examine whether the length of the applicant's detention exceeded what was reasonably required for the completion of the inquiry. *[paras. 159, 160, 161, 171 through 174, 182 and 188]*
Labsi v. Slovakia No.: 33809/08 Type: Judgment Date: 15 May 2012 Articles: Y: 3, 13, 34 Keywords: – assurances – asylum – expulsion – family life (separation of family) – ill-treatment – in absentia – interim measure Links: English only Translations: not available	*Circumstances:* Expulsion from Slovakia to Algeria (following denial of extradition) of a person who had been convicted and sentenced in Algeria in absentia for belonging to a terrorist organization. Interim measure not complied with. *Relevant complaint:* The applicant complained that by expelling him to Algeria the respondent State had breached Article 3 of the Convention. *Court's conclusions:* The assurances given by the Algerian authorities concerning fair trial and protection from ill-treatment were of a general nature, and they have to be considered in the light of the information which was available at the time of the applicant's expulsion as to the human rights situation in his country of origin. In that respect it is firstly relevant that the Supreme Court found that the applicant's extradition to Algeria was not permissible. With reference to the Court's case-law and a number of international documents it concluded that there were justified reasons to fear that the applicant would be exposed to treatment contrary to Article 3 of the Convention in Algeria. Secondly, a real risk of the applicant being exposed to ill-treatment in his country of origin was also acknowledged in the asylum proceedings. Thirdly, as regards the receiving State's practices, it is particularly relevant that a number of international documents highlighted a real risk of ill-treatment to which individuals suspected of terrorist activities were exposed while in the hands of the DRS. That authority was reported to have detained people incommunicado and beyond the control of judicial authorities for a period from twelve days up to more than one year. Specific cases of torture or other forms of ill-treatment were reported to have occurred during such detention. *[paras. 122 through 125]*
S. F. and others v. Sweden No.: 52077/10 Type: Judgment Date: 15 May 2012 Articles: Y: 3 Keywords:	*Circumstances:* Expulsion from Sweden to Iran. Interim measure complied with. *Relevant complaint:* The applicants complained that, if deported to Iran, they would be subjected to torture or inhuman and degrading treatment or punishment, in violation of Article 3 of the Convention. *Court's conclusions:* Whilst being aware of the reports of serious human rights violations in Iran, the Court does not find them to be of such a nature as to show, on their own, that there would be a violation of the Convention if an applicant were returned to that country. The Court has to establish whether the

– expulsion – ill-treatment Links: English only Translations: German, Icelandic, Russian	applicants' personal situation is such that their return to Iran would contravene Article 3 of the Convention. To determine whether these activities would expose the applicants to persecution or serious harm if returned to Iran, the Court has regard to the relevant country information on Iran, as set out above. The information confirms that Iranian authorities effectively monitor internet communications and regime critics both within and outside of Iran. It is noted that a specific intelligence "Cyber Unit" targets regime critics on the internet. Further, according to the information available to the Court, Iranians returning to Iran are screened on arrival. There are a number of factors which indicate that the resources available could be used to identify the applicants and, in this regard, the Court also considers that the applicants' activities and alleged incidents in Iran are of relevance. The first applicant's arrest in 2003 as well as his background as a musician and prominent Iranian athlete also increase the risk of his being identified. Additionally, the applicants allegedly left Iran illegally and do not have valid exit documentation. Having considered the applicants' *sur place* activities and the identification risk on return, the Court also notes additional factors possibly triggering an inquiry by the Iranian authorities on return as the applicants belong to several risk categories. They are of Kurdish and Persian origin, culturally active and well-educated. *[paras. 64, 69 and 70]*
Shakurov v. Russia No.: 55822/10 Type: Judgment Date: 5 June 2012 Articles: Y: 5§4; N: 3, 5§1, 8 Keywords: – assurances – asylum – custody (lawfulness) – custody (length) – extradition (custody) – extradition (grounds for refusal) – family life (separation of family) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for a military offence. Interim measure complied with. *Relevant complaints:* 1. If extradited the applicant would be ill-treated in Uzbekistan, in breach of Article 3 of the Convention. The diplomatic assurances of the requesting State were insufficient to discard the risk of ill-treatment. There was no control mechanism at the domestic level which would allow tracking the authorities' compliance with the assurances and holding them liable in case of a breach. The information sent by the Prosecutor General's Office to their Uzbek counterpart following the extradition request, such as the applicant's intention to apply for asylum in Russia and his criticism of the human rights situation in Uzbekistan, made him particularly vulnerable to a risk of political persecution. Assurances from the Uzbek authorities could not offer a reliable guarantee against the risk of ill-treatment, given that the practice of torture there was described by reputable international sources as being systematic. Given a number of international reports on the general human rights situation in Uzbekistan, the existence of domestic laws and accession to international treaties by the requesting State were not sufficient to offer him adequate protection against the risk of ill-treatment. 2. The term of detention pending extradition had started running on 29 October 2009 when the court had first ordered his detention. Since the statutory twelve-month period of detention under Article

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

	applicant mostly challenged the charges brought against him in Uzbekistan and referred to the overall poor economic and human rights situation there. He stated that he had left Uzbekistan with a view to ensuring his family's well-being, in particular their economic well-being. The applicant did not submit asylum or refugee applications until January 2010, that is right after his detention with a view to extradition and over seven years after his arrival in Russia. *[paras. 130, 131, 137 and 138]* 2. The district court specified the time-limits in the detention orders, relying on Article 109 of the CCrP and the Minsk Convention. Both the district and the regional courts assessed the lawfulness and various circumstances, which were considered to be relevant to the applicant's detention, including the progress of the extradition proceedings and his refugee or asylum applications. The implementation of an interim measure following an indication by the Court to a State Party that it would be desirable, until further notice, not to return an individual to a particular country does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5§1 of the Convention. In other words, the domestic authorities must still act in strict compliance with domestic law. The extradition proceedings, although suspended for over three months pursuant to the request made by the Court, have nevertheless been in progress and in compliance with the domestic law. *[paras. 158, 168 and 170]* 3. It appears that the major part of the delays – some ten and thirty days – related to the period of time when the case file was being transferred from the first-instance court to the appeal court. Apparently, the domestic legislation did not set out any relevant time-limit for this purpose. It therefore follows that the entire length of the appeal proceedings is attributable to the domestic authorities. It does not appear that any complex issues were involved in the determination of the lawfulness of the applicant's detention by the second-instance court. Neither was it argued that proper review of detention had required, for instance, the collection of additional observations and documents pertaining to the applicant's personal circumstances such as his medical condition. The Court considers that it is incumbent on the respondent State to organise its legal system in such a way which allows for speedy examination of detention-related issues. *[paras. 184, 185 and 186]* 4. Mindful of the importance of extradition arrangements between States in the fight against crime, the Court had held that it would only be in exceptional circumstances that an applicant's private or family life in a Contracting State would outweigh the legitimate aim pursued by his or her extradition. It has not been substantiated that the applicant would have any significant difficulty in maintaining his family life after execution of the extradition order. It is unclear how and whether the extradition would particularly affect their relationship with the applicant. As regards medical care provided to

	the applicant's daughter (who was sixteen at the time and has reached the age of majority now), the reviewing courts took this aspect into consideration, in so far as it was articulated by the applicant. It appears that the treatment could well be pursued without the applicant. It has not been convincingly shown that the best interests and well-being of the children should have weighed heavily, alone or in combination with other factors, against the extradition. The present case does not disclose any "exceptional circumstances", and it has not been substantiated that execution of the extradition order would entail exceptionally grave consequences for the applicant's family life. With due regard to the gravity of the charges against the applicant and the legitimate interest Russia has in honouring its extradition obligations, the Court is satisfied that the extradition decision in respect of the applicant was proportionate to the legitimate aim pursued. *[paras. 196, 200, 201 and 202]*
Kozhayev v. Russia No.: 60045/10 Type: Judgment Date: 5 June 2012 Articles: Y: 5§1, N: 3, 5§1 Keywords: – assurances – custody (lawfulness) – custody (length) – death penalty – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Belarus for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. If extradited to Belarus, the applicant risked being sentenced to the death penalty; he would be ill-treated in Belarusian detention facilities, in particular, with a view to extracting a confession from him in relation to the criminal offences he was accused of; and that he would have to suffer from appalling conditions of detention in such facilities. The applicant also alleged that the above matters, in particular concerning the risk of ill-treatment, had not been properly examined by the Russian authorities. 2. The detention order of 25 November 2009 had not set a limit on the duration of the applicant's detention and that there had been no extension orders. Subsequent detention orders had authorised his detention for long periods of time. The circumstances relating to his detention could have changed with the passage of time, while the detention orders had remained based on the gravity of the charges against him and the existence of pending extradition proceedings. In any event, the applicable procedures and legislation had been insufficiently clear and precise. *Court's conclusions:* 1. Besides making reference to various international reports concerning the general human-rights situation in Belarus, the applicant has not substantiated an individualised risk of ill-treatment on account of his alleged religious beliefs. He did not provide convincing arguments and evidence relating to any alleged persecution of Hare Krishna followers in Belarus. While it is common ground between the parties that in the event of his extradition the applicant will be kept in detention in Belarus pending trial, his reference to a general problem concerning human rights observance in the

	requesting country cannot alone serve as a sufficient basis to bar extradition. It is true that the Court previously considered that extradition or deportation to a specific country on charges relating to politically and/or religiously motivated criminal offences could, depending on the context, raise serious issues under Article 3 of the Convention. At the same time, no such special context was present when an applicant was charged with an ordinary criminal offence. The applicant in the present case was charged with an ordinary criminal offence without any particular, for instance political, context. The applicant in the present case does not claim to belong to the political opposition. The applicant's reliance on various reports based on the assessment of the political context in relation to the elections in Belarus is therefore not persuasive. The applicant did not allege that his previous experience of criminal prosecution in Belarus had involved any circumstances that substantiated a serious risk of ill-treatment or unfair trial in the future. The applicant's allegation that any detained criminal suspect in Belarus runs a risk of ill-treatment is too general. Having examined the available material and the parties' submissions, the Court considers that it has not been substantiated that the human rights situation in Belarus is such as to call for a total ban on extradition to that country, for instance on account of a risk of ill-treatment of detainees. There is no evidence that members of the applicant's family were previously persecuted or ill-treated in Belarus. No inferences, beyond mere speculation, should be made in the present case from the alleged delay in bringing proceedings against the applicant in relation to the attempted murder in 1998. The death penalty was, at the time, and remains enumerated in Article 139§2 among the possible sentences for certain offences; however, the Court should not speculate on the possible outcome of the applicant's criminal case in Belarus. Even assuming that the accusation against the applicant can be reclassified, there is no evidence that an attempted/inchoate nature of the offence in question, which is not disputed, entails the death penalty, or that persons convicted of such offences are liable in practice to be sentenced to death. In fact, it is clear from Article 67 of the Belarusian Criminal Code that the death penalty should not be imposed for attempted offences. *[paras. 87 through 91 and 95]* 2. The period of the applicant's detention under the court order of 18 January 2010 expired on 23 May 2010. A new detention order was issued on 24 May 2010. For detention to meet the standard of "lawfulness", it must have a basis in domestic law. It does not appear that, under Russian law, a detainee could continue to be held in detention once an authorised detention period had expired, or that any exceptions to that rule were permitted or provided for, no matter how short the duration of the detention. Thus, the period of the applicant's detention between the expiry of the previous

	detention order at midnight on 23 May 2010 until the time when a new one was issued on 24 May 2010 was "unlawful". *[para. 106]*
Soliyev v. Russia No.: 62400/10 Type: Judgment Date: 5 June 2012 Articles: N: 5§4 Keywords: – asylum – custody (lawfulness) – custody (length) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Uzbekistan of an asylum seeker for prosecution for attempting to overthrow the constitutional order, belonging to a religious group and dissemination of subversive materials. Interim measure complied with. Extradition refused for risk of ill-treatment. *Relevant complaint:* The applicant's detention from 28 to 30 September 2010 had been unlawful. There had been no effective procedure by which he could have challenged his detention. He and his lawyers had not been afforded an opportunity to be present at the appeal hearing *Court's conclusions:* Even accepting that the prosecutor's extension request was submitted to the district court in breach of the seven-day period, the Court considers that this procedural irregularity was not such as to entail a breach of Article 5§1 of the Convention. The proceedings by which the applicant's detention was ordered and extended amounted to a form of periodic review of a judicial character. It is not in dispute that the first-instance court was enabled to assess the conditions which, according to Article 5§1(f) of the Convention, are essential for "lawful" detention with a view to extradition. In addition, while Article 5§4 of the Convention does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. Although regrettable, the fact that the applicant and his lawyer were not informed of the appeal hearing did not entail, in the circumstances of the case, a breach of Article 5§4 of the Convention. The Court notes in that connection that the applicant and his lawyer were present at the detention hearing before the first-instance court. There is no indication that this hearing was unfair. The appeal court examined the issue of the applicant's detention on the basis of written submissions and upheld the detention order issued by the lower court. It does not appear that the prosecutor made any additional oral argument or adduced new evidence. *[paras. 38, 59, 60 and 66]*
Khodzhamberdiyev v. Russia No.: 64809/10 Type: Judgment Date: 5 June 2012 Articles: N: 5§1, 5§4 Keywords: – asylum – custody (lawfulness) – custody (length) – extradition (custody)	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for attempting to overthrow the existing regime, setting up a criminal group, producing and disseminating documents containing a threat to national security and public order, and setting up, managing and participating in extremist, separatist, fundamentalist and other banned organisations. Extradition refused because the person sought applied for asylum. The application for asylum has been, in the end, also refused by Russian authorities but the UNHCR later recognised the applicant as eligible for refugee status. Interim measure complied with. *Relevant complaint:* The applicant argued that his detention with a view to extradition had been in breach of the requirement of lawfulness under Article 5§1(f) of the Convention. The applicant also alleged that

Links: English only Translations: not available	the authorities failed to display diligence in the conduct of the extradition proceedings between 22 June and 9 August 2010. He had no effective procedure by which he could challenge his detention *Court's conclusions:* It appears that the extradition proceedings were "in progress" all this time, including between June and August 2010. On 28 December 2010 the regional court examined the extradition case and annulled the extradition order of 9 August 2010, also ordering the applicant's release from detention. Before the expiry of the time-limit, the detention was subsequently subject to extension requests from a prosecutor's office, and was extended on several occasions, including on 1 April and 23 August 2010, also for specific periods of time. *[paras. 90 and 109]*
Bajsultanov v. Austria No.: 54131/10 Type: Judgment Date: 12 June 2012 Articles: N: 3, 8 Keywords: – asylum – expulsion – family life (separation of family) – ill-treatment Links: English only Translations: German	*Circumstances:* Expulsion from Austria to Russia of a Chechen who had been granted asylum status in Austria that has been subsequently lifted. Interim measure complied with. *Relevant complaints:* 1. The country reports consulted had shown that there were still grave human rights violations in Chechnya and that the security services very often resorted to violence and abuse. Rebels, or people considered rebels or friends of rebels, were at risk of being detained, of disappearing and/or of being tortured. However, the Austrian authorities had not drawn the right conclusions on the basis of those reports and the original reasons for the applicant's flight when they allowed his asylum status to be lifted. 2. The applicant's wife and the two children had independent asylum status in Austria. In those asylum decisions, the Independent Asylum Panel explicitly stated that the applicant's wife had a well-founded fear of independent persecution if she returned to the Russian Federation. It followed that the applicant's wife and children could not reasonably be expected to follow the applicant to the Russian Federation to maintain family life; in fact, an expulsion of the applicant to the Russian Federation would render any effective family relations impossible. *Court's conclusions:* 1. The applicant had acted in a supporting role during the first war, which ended in 1996. He had not taken any part in the second war in Chechnya. The Court thus finds that considerable time has passed since the first Chechen war. In this context, the Court refers to the report of the Danish Immigration Service's fact-finding mission, which stated that even active participants in the first war were not at risk of being persecuted by the present Chechen authorities. His family, namely his parents and six siblings, continued to live in Chechnya after the applicant had left and had not reported, according to the applicant's own statement, any harassment or abusive behaviour by local or federal security forces in the region. The applicant had kept in regular telephone contact with his father; it is therefore

	likely that he would have known of any punitive actions against his relatives in Chechnya. In view of the repeatedly reported practice of abuse of relatives of alleged rebels or supporters and sympathisers, it therefore seems that the applicant is not considered to belong to either of these groups. Overall, it seems that in spite of certain improvements, the general security situation in Chechnya cannot be considered safe. However, the applicant's individual situation does not show substantial grounds for believing that he would be at a real risk of ill-treatment within the meaning of Article 3 of the Convention if he returned to the Russian Federation. *[paras. 65, 66 and 67]* 2. The applicant's wife and the children are recognised refugees in Austria, with asylum status which has been awarded to them in separate decisions. However, at the time the applicant's wife was considered to be at risk of persecution in Chechnya due to her husband being at risk. The applicant's wife herself never claimed a risk of ill-treatment because of her own conduct or her own role in any of the armed conflicts. Consequently, in view of the Court's finding with regard to the applicant's complaint under Article 3 of the Convention above, the applicant's wife can also not be considered as being at a real risk of being subjected to treatment contrary to Article 3 of the Convention if she returned to Chechnya. *[para. 89]*
Rustamov v. Russia No.: 11209/10 Type: Judgment Date: 3 July 2012 Articles: Y: 3; N: 5§1, 5§4, 34 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – extradition (grounds of refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Uzbekistan for prosecution for suspicion of attempting to overthrow Uzbek constitutional order of person granted refugee status by the UNHCR and seeking asylum in Russia (decision pending). Interim measure complied with. *Relevant complaints:* 1. If extradited, the applicant would be ill-treated in Uzbekistan in breach of Article 3 of the Convention. At the very beginning of the proceedings against him, the Uzbek authorities had been already regarding him as a criminal, in violation of the presumption of innocence. 2. The applicant's detention with a view to extradition had been in breach of the requirement of lawfulness under Article 5 of the Convention. 3. The authorities had not displayed sufficient diligence in the conduct of the extradition proceedings. *Court's conclusions:* 1. Requesting an applicant to produce "indisputable" evidence of a risk of ill-treatment in the requesting country would be tantamount to asking him to prove the existence of a future event, which is impossible, and would place a clearly disproportionate burden on him. What should be assessed in this type of case are the foreseeable consequences of sending the applicant to the receiving country. The domestic courts' analysis of the human rights situation in Uzbekistan was confined to a reference to the results of checks by various domestic authorities, without any additional details. In the absence

	of further details on this point the Court considers that a brief reference to the above results of inquiries cannot be accepted as sufficient for the purpose of the analysis of the human rights situation in the host country. *[paras. 117 and 119]* 2. In so far as the applicant may be understood to argue that he had remained in detention on the basis of fabricated charges, it is immaterial, for the purposes of Article 5§1(f) of the Convention, whether the underlying decision to expel or to extradite can be justified under national law or the Convention. *[para. 155]* 3. Since 7 July 2011, proceedings concerning the applicant's request for temporary asylum have been pending before the domestic authorities. In these circumstances, the Court is satisfied that actions were taken by the authorities in the proceedings which could have had a bearing on the extradition issue, and the authorities and courts before which the case came gave their decisions within reasonable time. *[para. 165]*
Samsonnikov v. Estonia No.: 52178/10 Type: Judgment Date: 3 July 2012 Articles: N: 8 Keywords: – expulsion – family life (separation of family) Links: English only Translations: Estonian	*Circumstances:* Expulsion from Estonia to Russia of HIV-positive person, previously deported from Sweden to Estonia, who had been born and raised in Estonia and had no ties in Russia. *Relevant complaint:* The applicant had spent his whole life in Estonia and being a second-generation immigrant had no ties whatsoever with any other country. Therefore, he deserved increased protection under the Convention. *Court's conclusions:* Although the applicant argued that he had close family ties with his father, who lived in Estonia, and that they were dependent upon one another owing to his illness and his father's advanced age, the Court is not convinced that these relations extended beyond usual ties between grown-up family members. *[para. 87]*
Umirov v. Russia No.: 17455/11 Type: Judgment Date: 18 September 2012 Articles: Y: 3; N: 5§1 Keywords: – assurances – asylum – custody (lawfulness) – custody (length)	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for membership in an extremist religious organization of a person granted temporary asylum in Russia. Interim measure complied with. *Relevant complaints:* 1. The applicant's extradition to Uzbekistan would subject him to a real risk of ill-treatment. None of the Russian authorities had properly examined his claim that he would be exposed to a risk of being subjected to ill-treatment if extradited to Uzbekistan. Those authorities had only relied on the material obtained from the Russian governmental agencies. No attempt had been made to study reliable independent sources.

– extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	2. The applicant's detention had not been justified, as the extradition proceedings had not been and were not being pursued with the requisite diligence, in particular after the Court's indication of interim measure. *Court's conclusions:* 1. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations. Consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the requesting country as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the requesting country and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. The weight to be attached to independent assessments must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3 of the Convention. As regards detainees in Uzbekistan, the available updated and reliable material confirmed the persisting serious issue concerning ill-treatment of detainees. Against this background, the Court notes the summary and unspecific reasoning adduced by the domestic authorities, and the Government before the Court, to dispel the alleged risk of ill-treatment on account of the above considerations, including the evident pre-existing adverse interest the Uzbek authorities had in the applicant. Furthermore, it is noted that the court conducting judicial review in the present case stated that the allegation of a risk of ill-treatment "in itself [was] not a reason for granting [the] challenge to the extradition order". In such circumstances, the Court doubts that the issue of the risk of ill-treatment was subject to rigorous scrutiny in the extradition case. No fair attempt was made at the domestic level to assess the materials originating from reliable sources other than those provided by the Russian public authorities. The Court finds unconvincing the national authorities' reliance, without any assessment or discussion, on

	assurances provided by Uzbekistan for dispelling the risk of ill-treatment. *[paras. 99, 100, 109, 120 and 121]* 2. The implementation of an interim measure following an indication by the Court to a State Party that it should not, until further notice, return an individual to a particular country does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5§1 of the Convention. In other words, the domestic authorities must still act in strict compliance with domestic law. In the present case, it has not been substantiated before the Court, after having raised related complaints before national courts, that the applicant's detention between May and November 2011 was unlawful under Russian law. The national court extended the applicant's detention with reference to the relevant legal grounds in terms of Russian law, namely the risk that the applicant would flee justice, if at large. Second, it should be taken into consideration that detention with a view to extradition in the present case was subject to the maximum statutory eighteen-month period. Indeed, at the expiry of such period, the applicant was released at the prosecutor's request. Lastly, there is no indication that the authorities acted in bad faith, that the applicant was detained in unsuitable conditions or that his detention was arbitrary for any other reason. *[paras. 140 and 141]*
Rrapo v. Albania No.: 58555/10 Type: Judgment Date: 25 September 2012 Articles: Y: 34; N: 2, 3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Extradition from Albania to the United States of America for the purposes of prosecution that could result in imposition of death penalty. Interim measure not complied with. *Relevant complaints:* 1. The applicant's extradition to the United States, and the risk of being subjected to the death penalty, gave rise to a breach of Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13. He also questioned the quality of the assurances given by the United States authorities by way of diplomatic notes: the only responsible authority for giving such assurances should have been the Attorney General. 2. The applicant's extradition to the United States, in breach of the Court's indication of interim measure, gave rise to a violation of Article 34 of the Convention. *Court's conclusions:* 1. The Court recognises that, in extradition matters, diplomatic notes are a standard means for the requesting State to provide any assurances which the requested State considers necessary for its consent to extradition. It also recognises that, in international relations, diplomatic notes carry a presumption of good faith. The Court considers that, in extradition cases, it is appropriate that that presumption be applied to a requesting State which has a long history of respect for democracy,

	human rights and the rule of law, and which has longstanding extradition arrangements with Contracting States. The Court finds nothing in the materials before it that could cast doubts as to the credibility of the assurances that capital punishment would not be sought or imposed in respect of the applicant by the requesting State. The assurances given by the United States Government were specific, clear and unequivocal. The Court must further attach importance to the fact that, in the context of an extradition request, there have been no reported breaches of an assurance given by the United States Government to a Contracting State. The United States long-term interest in honouring its extradition commitments alone would be sufficient to give rise to a presumption of good faith against any risk of a breach of those assurances. *[paras. 72 and 73]* 2. The Court cannot accept the Government's argument that the failure to extradite the applicant would have interfered with Albania's international obligations under the 1935 Extradition Treaty. The Convention is intended to safeguard rights that are "practical and effective" and a respondent State is considered to retain Convention liability in respect of treaty commitment prior to or subsequent to the entry into force of the Convention. It is not open to a Contracting State to enter into an agreement with another State which conflicts with its obligations under the Convention. The fact that the harm which an interim measure was designed to prevent subsequently does not materialize, despite a State's failure to act in full compliance with the interim measure, is equally irrelevant for the assessment of whether the respondent State has fulfilled its obligations under Article 34 of the Convention. The Court rejects the Government's argument that the applicant's extradition was unavoidable given the imminent expiry of his period of detention and the absence of any alternative to his release. Neither the existing state of national law expounded by the Government, notably the alleged legal vacuum concerning the continuation of detention beyond the time-limit provided for in Article 499 of the CCP, nor deficiencies in the national judicial system and the difficulties encountered by the authorities in seeking to achieve their legislative and regulatory objectives, can be relied upon to the applicant's detriment, in the absence of a final domestic court judgment authorising his extradition, or avoid or negate the respondent State's obligations under the Convention. There is no indication that the authorities considered the possibility of taking any steps to remove the risk of the applicant's flight in the event of his release, by, for example, the imposition of other coercive forms of security measures provided for under the CCP. The authorities did not inform the Court, prior to the extradition, of the difficulties encountered by them in complying with the interim measure. *[paras. 86 and 87]*

Abdulkhakov v. Russia No.: 14743/11 Type: Judgment Date: 2 October 2012 Articles: Y: 3, 5§1(f), 5§4, 34; N: 8, 5§1(f) Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: German	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for membership in a banned organization of a person seeking asylum in Russia, who has also been granted refugee status by the UNHCR. Interim measure not complied with because the applicant has been transferred to Tajikistan following his release from custody. *Relevant complaints:* 1. If extradited to Uzbekistan, the applicant's would be subjected to ill-treatment. The domestic authorities had not taken into account the evidence submitted by the applicant and had dismissed his fears as unsubstantiated without a thorough assessment of the general situation in Uzbekistan or his personal situation, relying on the diplomatic assurances provided by the Uzbek authorities. 2. From 9 December 2009 to 8 February 2010, the applicant had been detained without any judicial decision having authorized that detention. Moreover, the applicant submitted that the length of his detention had been excessive and that the extradition proceedings had not been conducted with due diligence. In particular, although the extradition proceedings had been completed on 14 March 2011, he had not been released until 9 June 2011, after the expiry of the maximum detention period permitted under Russian law. 3. The applicant complained that his appeals against the detention orders of 7 September and 8 December 2010 had not been examined "speedily". *Court's conclusions:* 1. The applicant's situation is similar to those Muslims who, because they practiced their religion outside official institutions and guidelines, were charged with religious extremism or membership of banned religious organizations and, on this account, as noted in the reports and the Court's judgments, were at an increased risk of ill-treatment. It is also significant that the criminal proceedings against the applicant were opened in the immediate aftermath of terrorist attacks in the Fergana Valley in the summer of 2009. During the period immediately following those attacks, reputable international NGOs reported a wave of arbitrary arrests of Muslims attending unregistered mosques followed by their incommunicado detentions, charges of religious extremism or attempted overthrow of the constitutional order, and their ill-treatment to obtain confessions. In the Court's opinion, the fact that the charges against the applicant and the extradition request date from that period intensifies the risk of ill-treatment. An arrest warrant was issued in respect of the applicant, making it most likely that he will be immediately remanded in custody after his extradition and that no relative or independent observer will be granted access to him. It also takes into account that the office of the UN High Commissioner for Refugees granted him mandate refugee status after

	determining he had a well-founded fear of being persecuted and ill-treated if extradited to Uzbekistan. Against this background, the Court is persuaded that the applicant would be at a real risk of suffering ill-treatment if returned to Uzbekistan. The Court is struck by the summary reasoning adduced by the domestic courts and their refusal to assess materials originating from reliable sources. In such circumstances, the Court doubts that the issue of the risk of ill-treatment of the applicant was subject to rigorous scrutiny, either in the refugee status or the extradition proceedings. The Court notes that the assurances provided by the Uzbek authorities were couched in general stereotyped terms and did not provide for any monitoring mechanism. It finds unconvincing the authorities' reliance on such assurances, without their detailed assessment against the standards elaborated by the Court. *[paras. 145 through 150]* 2. From 9 to 30 December 2009 the applicant was in a legal vacuum that was not covered by any domestic legal provision clearly establishing the grounds of his detention and the procedure and the time-limits applicable to that detention pending the receipt of an extradition request. The Court notes the absence of any precise domestic provisions establishing under which conditions, within which time-limit and by a prosecutor of which hierarchical level and territorial affiliation the issue of detention is to be examined after the receipt of an extradition request. Although the extradition request was received on 30 December 2009, it was not until 18 January 2010 that the prosecutor ordered the applicant's detention on the basis of Article 466§2 of the CCrP. During that entire period the applicant remained unaware of the grounds of his detention and the time-limit on that detention. The applicant's detention from 30 December 2009 to 8 February 2010 was based on a legal provision, namely Article 466§2 of the CCrP, which, due to a lack of clear procedural rules, was neither precise nor foreseeable in its application. As to the period of detention from 14 March to 9 June 2011, the Court notes that on 14 March 2011 the lawfulness of the extradition order was confirmed by the appeal court. Although the domestic extradition proceedings were thereby terminated, the applicant remained in custody for a further two months and twenty-six days. During this time the Government refrained from extraditing him in compliance with the interim measure indicated by the Court under Rule 39 of the Rules of Court. The Court is satisfied that the requirement of diligence was complied with in the present case and the overall length of the applicant's detention was not excessive. *[paras. 173, 176, 177, 179, 188 and 191]* 3. The efficiency of the system of automatic periodic judicial review was undermined by the fact that a new relevant factor arisen in the interval between reviews and capable of affecting the lawfulness of the applicant's detention was assessed by a court with an unreasonably long delay. In such

	circumstances, the Court cannot but find that the reviews of the lawfulness of the applicant's detention were not held at "reasonable intervals". *[para. 217]*
Makhmudzhan 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	*Circumstances:* Extradition of an unsuccessful asylum seeker of ethnic Uzbek origin from Russia to the 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]*
Rushing v. The Netherlands No.: 3325/10 Type: Decision Date: 27 November 2012 Articles: N: 3 Keywords: – extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: not available	*Circumstances:* Extradition of a US national to the United States of America on drug trafficking charges. *Relevant complaint:* If extradited to the US, the applicant risks to be sentenced to a mandatory life sentence without any possibility of release. *Court's conclusions:* It is not established that the applicant would be sentenced to a mandatory life sentence. According to the information provided by the US authorities, the imposition of a mandatory life sentence in the applicant's case is excluded but that he would face a mandatory sentence of ten years imprisonment. It is by no means certain that the applicant will be convicted of the charges against him and it remains open for him to apply for a Presidential pardon. The US authorities also pointed out that US judges are to consider sentence disparity when determining a sentence. Since a co-defendant was sentenced to a 10 year' imprisonment for similar offences, it is unlikely that the applicant would be sentenced to a life sentence. *[para. 26]*
F. N. and Others v. Sweden No.: 28774/09 Type: Judgment Date: 18 December 2012 Articles: Y: 3 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion from Sweden to Uzbekistan following rejection of the applicants' requests for asylum. Interim measure complied with. *Relevant complaint:* If expelled from Sweden to Uzbekistan, the applicants would be persecuted, arrested, ill-treated and maybe even killed, primarily because the first applicant had participated in the demonstration in Andijan in May 2005 and was still sought by the Uzbek authorities. *Court's conclusions:* The main issue before the Court is not whether the applicants would be detained and interrogated by the Uzbek authorities upon return since this would not, in itself, be in contravention of the Convention. The Court's concern is whether or not the applicants would be ill-treated or tortured, contrary to Article 3 of the Convention, if returned. In examining this matter, the Court observes that it has already in previous cases found that the practice of torture of those in police custody was systematic and indiscriminate and concluded that ill-treatment of detainees remained a pervasive and enduring problem in Uzbekistan. Moreover, having regard to the information from international sources, the Court cannot but conclude that the situation in Uzbekistan has not improved in this respect but that torture and other cruel, inhuman and degrading treatment by law enforcement and investigative officials remain

	widespread and endemic. In these circumstances, the risk of the applicants being subjected to treatment contrary to Article 3 of the Convention must be considered a real one if they were to be detained and interrogated by the Uzbek authorities. The applicants have invoked various grounds for fear and the Court has found reasons to believe that the Uzbek authorities may have a special interest in the applicants, both in relation to the events in Andijan and the first applicant's membership in *Birdamlik*. *[paras. 77 and 78]*
S. H. H. v. United Kingdom No.: 60367/10 Type: Judgment Date: 29 January 2013 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion of a disabled person from the United Kingdom to Afghanistan following rejection of the applicant's requests for asylum. Interim measure complied with. *Relevant complaint:* The applicant's return to Afghanistan would violate Article 3 of the Convention because disabled persons were at particular risk of violence in the armed conflict in Afghanistan, both because they would be unable to remove themselves from dangerous situations swiftly and because they would be at greater risk of homelessness and thus more prone to being affected by the indiscriminate violence which occurs on the streets of Afghanistan. Whilst the difficulties faced by persons with disabilities in Afghanistan may not engage Article 3 of the Convention if they had family support available to them, a person, like the applicant, without close family connections would suffer the full consequences of the discrimination against, and ignorance surrounding, persons with disabilities. The Secretary of State's failure to wait for a medical report about the applicant's injuries when making the first instance decision on the applicant's asylum claim, amounted to a breach of the obligation under Article 3 of the Convention to conduct a rigorous scrutiny of an individual's claim that his expulsion would expose that individual to treatment prohibited by Article 3 of the Convention. *Court's conclusions:* Socio-economic and humanitarian conditions in a country of return did not necessarily have a bearing, and certainly not a decisive bearing, on the question of whether the persons concerned would face a real risk of ill‑treatment within the meaning of Article 3 of the Convention in those areas. Noting that Article 3 of the Convention did not place an obligation on Contracting States to alleviate disparities in the availability of medical treatment in different States through the provision of free and unlimited health care to all aliens without a right to stay within their jurisdictions, the Court nevertheless held that humanitarian conditions would give rise to a breach of Article 3 of the Convention in very exceptional cases where the humanitarian grounds against removal were compelling. The Court stated had not excluded the possibility that the responsibility of the State under Article 3 of the Convention might be engaged in respect of treatment where an applicant, who was wholly dependent on State support, found himself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity. The Court considers it to be significant that the applicant has failed to

	adduce any additional substantive evidence to support his claim that disabled persons are *per se* at greater risk of violence, as opposed to other difficulties such as discrimination and poor humanitarian conditions, than the general Afghan population. In the absence of any contrary evidence, the Court therefore concludes that this claim has to be considered to be to a large extent speculative and does not accept that the applicant has demonstrated that, as a result of his disabilities, he would be subjected to an enhanced risk of indiscriminate violence in Afghanistan such as to engage Article 3 of the Convention. The application concerns the living conditions and humanitarian situation in Afghanistan, a non−Contracting State, which has no such similar positive obligations under European legislation and cannot be held accountable under the Convention for failures to provide adequate welfare assistance to persons with disabilities. In that regard, it is recalled that the Convention does not purport to be a means of requiring Contracting States to impose Convention standards on other States. Whilst full account must be taken of the significant hardship facing persons with disabilities in Afghanistan, including discrimination, a lack of employment opportunities and a scarcity of services, it is of some relevance that the applicant has family members who continue to live in Afghanistan. Therefore, the Court is not able to accept the applicant's claim that he will be returning to Afghanistan and left destitute by reason of a total lack of support in that country. It is, in any event, of greater importance to the Court's consideration of the applicant's Article 3 complaint that the applicant remained in Afghanistan after he received his injuries in 2006 for four years until 2010 and was supported throughout that period, during which he also received medical treatment for his injuries. On the general information before the Court, it cannot be found that the circumstances that would confront the applicant on return to Afghanistan would, to a determinative degree, be worse than those which he faced during that four-year period. Likewise, although the quality of the applicant's life, already severely diminished by his disabled condition, will undoubtedly be negatively affected if he is removed from the United Kingdom to Afghanistan, that fact alone cannot be decisive. In respect of the complaint that the domestic authorities failed to await a medical report, the Court is unable to find that, in the circumstances of the present case, such a failure demonstrates a breach of Article 3 of the Convention. In that regard, besides the applicant's failure to have ever submitted a medical report in any event, the Court notes that, during the domestic proceedings, the First-tier Tribunal accepted both the extent of the applicant's injuries and the manner in which the applicant claimed that they had been caused. Thus, a medical report was not required in his case for the domestic authorities to have complied with their duty to ascertain all relevant facts in the applicant's case. *[paras. 74, 75, 76, 82, 86, 87, 90 and 93]*

Bakoyev v. Russia No.: 30225/11 Type: Judgment Date: 5 February 2013 Articles: Y: 5§1 N: 3, 5§1, 5§1(f) Keywords: – asylum – custody (lawfulness) – custody (length) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Kyrgyzstan; the decision later changed to extradite the applicant to Uzbekistan. Both extraditions for the purposes of criminal prosecution for fraud. In the course of the proceedings concerning the applicant's extradition to Kyrgyzstan, he applied for asylum but his request was denied. Interim measure complied with. *Relevant complaints:* 1. If extradited to Kyrgyzstan or Uzbekistan, the applicant would run the risk of ill-treatment and would be denied a fair trial. 2. The overall length of the applicant's detention pending extradition had been excessive, given that he had spent twelve months in detention pending his extradition to Kyrgyzstan and then another twelve months in detention pending his extradition to Uzbekistan. Although the Prosecutor General's Office of Russia had received an extradition request from the Uzbekistani authorities on 28 April 2011, no relevant checks had been carried out until 2 June 2011, the date on which the maximum possible term for the applicant's detention pending extradition to Kyrgyzstan had expired. *Court's conclusions:* 1. The Court has on several occasions noted the alarming reports on the human rights situation in Uzbekistan relating to the period between 2002 and 2007. In recent judgments concerning the same subject and covering the period after 2007 until recently, after having examined the latest available information, the Court has found that there was no concrete evidence to demonstrate any fundamental improvement in that area. At the same time, it has consistently emphasised that reference to a general problem concerning human rights observance in a particular country is normally insufficient to bar extradition. The Court is mindful of the fact that it has on several occasions found violations of Article 3 of the Convention in cases involving extradition or deportation to Uzbekistan. However, the applicants in those cases had been mostly charged with politically and/or religiously motivated criminal offences or the applicant's family had been either arrested or prosecuted in Uzbekistan, that their accounts of ill-treatment were mutually consistent and appeared to be credible, and that the applicant himself had previously been arrested and convicted in suspicious circumstances. In the present case, the applicant alleged for the first time that he would face a risk of ill-treatment if extradited to Uzbekistan in his court complaint against the extradition order of 2 September 2011. The Court observes in this connection that, both at the domestic level and in his submissions before the Court, the applicant only broadly referred to the risk of being ill-treated. In fact, the only argument he employed in support of this allegation was his reference to the practice of human rights violations, including torture, which was common in Uzbekistan. The applicant made no attempts, either in the

	domestic proceedings or before the Court, to refer to any individual circumstances and to substantiate his fears of ill-treatment in Uzbekistan. The domestic authorities, including the courts at two levels of jurisdiction, gave proper consideration to the applicant's arguments and dismissed them as unsubstantiated in detailed and well-reasoned decisions. There is nothing in the case file to doubt that the domestic authorities made an adequate assessment of the risk of ill-treatment in the event of the applicant's extradition to Uzbekistan. *[paras. 114, 115, 116, 118 and 119]* 2. The Court, however, is not convinced that the applicant's detention between 3 June 2010, when he was detained pending extradition to Kyrgyzstan, and 31 August 2011, when, according to the Government, he was released for the first time in the proceedings pending his extradition to Uzbekistan, constituted a continuing situation for the purposes of the assessment of its length, in so far as the issue of due diligence under Article 5§1(f) is concerned. From 3 June 2010 until 2 June 2011 the applicant was detained with a view to extradition to Kyrgyzstan, whereas between 2 June 2011 and 1 June 2012 – excluding the period between 31 August and 2 September 2011 – he remained in custody pending extradition to Uzbekistan. It is thus clear that the applicant was detained in the context of two separate sets of extradition proceedings. In so far as it concerned the length of the applicant's detention with a view to extradition to Kyrgyzstanthe application was lodged out of time and must be rejected. Even assuming that the applicant was kept in detention uninterruptedly from 2 June 2011 until 1 June 2012, that is, for twelve months, this period does not appear excessive. On 19 December 2011 the lawfulness of the extradition order was confirmed on appeal. Although the domestic extradition proceedings were thereby terminated, the applicant further remained in custody for more than five months, until 1 June 2012. During this time the Government refrained from extraditing him in compliance with the interim measure indicated by the Court under Rule 39 of the Rules of Court. 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 purpose of Article 5§1(f) of the Convention. *[paras. 158, 159, 160, 162, 164 and 165]* *[NOTE: The complaint and the Court's conclusions regarding lawfulness of the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*

Zokhidov v. Russia No.: 67286/10 Type: Judgment Date: 5 February 2013 Articles: Y: 3, 5§1(f), 5§2, 5§4, 34 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – expulsion – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure – relation between extradition and deportation or expulsion Links: English only Translations: Czech, German	*Circumstances:* Expulsion of an asylum seeker from Russia to Uzbekistan following denial of his extradition for the purposes of prosecution in connection with the applicant's presumed participation in Hizb ut Tahrir ("HT"), a religious organisation recognised as extremist and banned in Uzbekistan. Interim measure not complied with. *Relevant complaints:* 1. With reference to reports from various international bodies, the applicant argued that, as a person accused of participation in a proscribed religious organisation considered extremist by the requesting authorities, he ran a real risk of ill-treatment if removed to Uzbekistan. 2. The applicant had not been provided with a translation of the decisions concerning his placement in custody of 15 July and 24 August 2010, and had been deprived of his right to be informed promptly, in a language he understood, of the reasons for his arrest and the charges against him. 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. Where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of information contained in recent reports by independent international human rights protection bodies or non-governmental organisations, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances the Court will not then insist that the applicant show the existence of further special distinguishing features. The Court considers that this reasoning applies in the present case, where the applicant is accused of membership of a group in respect of which reliable sources confirm a continuing pattern of ill treatment and torture on the part of the authorities. It is also significant for the Court that the criminal proceedings against the applicant were opened in the aftermath of terrorist attacks in the Fergana Valley which had taken place in 2009. During the period following the incident, reputable international NGOs stated that the Uzbek authorities blamed HT, among other organisations, for the attacks and killings and reported a wave of arbitrary arrests of persons suspected of involvement with HT, followed by their incommunicado detention, charges of religious extremism or attempted overthrow of the constitutional order, and their ill treatment and torture to obtain confessions. In the Court's view, the fact that the charges against the applicant date from a period close to the above-mentioned events can also be regarded as a factor intensifying the

	risk of ill-treatment for him. As to the assurances given by the Uzbek authorities, the Court notes 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. 138, 139 and 141]* 2. When examining the issue of the applicant's detention the domestic courts considered that he had a poor command of Russian, since they appointed interpreters for him, who participated in all the hearings concerning his detention. The applicant did, however, submit, and this appears to be supported by copies of his interview record and his "explanation" of 15 July 2010, that he was able to understand and answer in Russian basic questions concerning his arrival in Russia, his family and his employment situation. Having regard to the applicant's arrest and interview records, as well as his explanation, the Court notes that those documents contained a reference to the fact that he was wanted by the Uzbek authorities, and it is prepared to accept that the applicant was able to infer that he was being sought by them. None of the documents mentioned above, however, outlined, even briefly, the reasons why the Uzbek authorities' were searching for him. Indeed, the interview record of 15 July 2010 contained only a reference to the numbers of several Articles from the Uzbekistan Criminal Code. At the time of the events described above the applicant was not represented and that his lawyer, who spoke some Uzbek and could have explained to him what those documents implied, assuming that such form of notification met the requirements of Article 5§2 of the Convention, stepped in the proceedings only on 18 August 2010, that is, more than a month later. *[paras. 171, 172 and 173]* 3. The Court is not persuaded by the Government's allegation that the Federal Migration Service ("FMS") was not aware of the interim measure indicated to the Government. Even assuming that the FMS officials had not known about it prior to the day of the applicant's deportation – a hypothesis favourable to the Government – it can be seen from the applicant's detailed submissions concerning the events of 21 December 2011 that he not only told them that he could not be returned to Uzbekistan because the European Court had applied Rule 39 in his case but also showed them a copy of the Court's letter to that effect. It further seems that the applicant's lawyer, who was able to participate in their telephone conversation via conference mode, also alerted them to that fact. In so far as the Government claimed that the domestic authorities had not intended to act in non-compliance with their obligations under Article 34 of the Convention, the Court reiterates that the intentions underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with. In any event, in this connection the Court cannot but take note of the precipitated manner in which the applicant's deportation was carried out,

	as well as his submissions, uncontested by the Government, to the effect that he was prevented from contacting his lawyer after he had been taken from his flat, and that the authorities, in fact, did everything to conceal his whereabouts from his lawyer and relatives and flatly denied the fact of his detention at the FMS premises when the lawyer contacted them, although the Government acknowledged in their submissions to the Court that he had been held there before being taken to Pulkovo airport. With regard to the Government's statement that the interim measure had concerned only the applicant's removal in the form of extradition and all the domestic authorities involved in the extradition proceedings had been informed of the application of Rule 39 of the Rules of Court, the Court points out that its letter informing the Government of the application of Rule 39 of the Rules of Court in the applicant's case did, indeed, state that the applicant should not be extradited to Uzbekistan until further notice. In this connection, however, it observes that whilst the formulation of the interim measure is one of the elements to be taken into account in its analysis of whether a State has complied with its obligations under Article 34 of the Convention, in making its assessment the Court must have regard not only to the letter but also to the spirit of the interim measure indicated by it, or, in other words, to the purpose of the measure. In this type of case, where a risk of irreparable damage to one of the core Convention rights is alleged by the applicant and the interim measure has been applied with a view, among other things, to preserving the status quo and the subject matter of the application, it should not be open to a Contracting State to circumvent the purpose of the interim measure by transferring such individual to a State which is not a party to the Convention, thereby depriving the applicant of its effective protection. The Court notes, moreover, that in the present case this was the country which had sought his extradition. *[paras. 203, 204, 205 and 207]* *[NOTE: The complaint and the Court's conclusions regarding lawfulness of the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*
Yefimova v.Russia No.: 39786/09 Type: Judgment Date: 19 February 2013 Articles: Y: 5§1(f), 5§4; N: 3, 5§1(f), 6 Keywords:	*Circumstances:* Extradition of a failed asylum seeker from Russia to Kazakhstan for the purposes of criminal prosecution for large-scale misappropriation of the property of a bank. General Prosecutor's Office of Kazakhstan provided assurances that the applicant's criminal prosecution was not politically motivated or based on any discriminatory grounds, and that after the termination of the criminal proceedings and after serving any sentence she would be free to leave Kazakhstan and that, if extradited, the applicant would be provided with adequate medical assistance, account being taken of her state of health. It also assured that in the event of her extradition the applicant would not be subjected to torture

– assurances – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – ill-treatment Links: English Translations: not available	or ill-treatment, and that she would be secured a right to a fair and public trial respecting the principle of adversarial proceedings. These assurances were also confirmed by the Deputy Minister of Foreign Affairs of Kazakhstan who also stated that, if extradited, the applicant would be held in a detention facility under the authority of the Ministry of Justice and that at any stage of criminal proceedings against the applicant the competent representatives of the Russian authorities would be granted access to her in detention with a view to verifying whether the Kazakhstani authorities complied with their undertakings. Interim measure complied with. *Relevant complaints:* 1. Referring to reports by various NGOs, the applicant submitted that the human rights situation in Kazakhstan was worrying, and that torture of detainees was not an exceptional situation. Conditions of detention, as well as medical care provided to detainees in Kazakhstani detention facilities, were poor and deficient. Moreover, in June 2010 Kazakhstan had enacted the law "On the leader of the nation", which, among other things, made it a criminal offence to "insult President Nazarbayev in public or to distort facts of his life". Any criminal suspect held in custody in Kazakhstan ran a risk of torture. Mr Ablyazov's criminal prosecution was politically motivated, the Kazakhstani authorities had accused him, in addition to corruption charges, of terrorism, and that since the investigating authorities considered the applicant to have had a "relationship of trust" with Mr Ablyazov, the charges against her also had a political overtone. It was obvious that she would be tortured with a view to obtaining statements incriminating Mr Ablyazov if she was returned to Kazakhstan. High-ranking Kazakhstani officials had already subjected the applicant to torture when they burst into the intensive care ward where she was a patient and threatened her with reprisals and also with withholding medical assistance from her if she refused to cooperate with them. Moreover, while in detention in Russia she was visited by an official of the Kazakhstani prosecutor's office who, in the presence of her lawyer and a Russian investigator threatened her with reprisals if she refused to give a statement incriminating Mr Ablyazov. 2. The applicant further doubted that, given her state of health and the poor level of medical care available in the requesting country's detention facilities, she would receive the medical assistance there that she required for her condition. 3. The assurances provided by the Kazakhstani authorities were unreliable and one of them had been provided by the same person who had threatened her with refusal of medical assistance. Once the applicant were extradited, the Russian authorities would in any event not be interested in monitoring whether the Kazakhstani authorities were complying with their undertakings.

	4. The applicant would face a risk of being denied a fair trial in Kazakhstan because the criminal proceedings against the BTA management were politically motivated. The courts in Kazakhstan were not independent, and the judges were appointed by the President, who had a personal interest in the outcome of the criminal proceedings against her. Lawyers in Kazakhstan were pressurised by the State authorities and the domestic courts had refused to admit her lawyer in the criminal proceedings in Kazakhstan. *Court's conclusions:* 1. The Court considers that the applicant's statement concerning the threats allegedly uttered by high ranking Kazakhstani officials while she was in hospital in Kazakhstan not only lacks substantiation but contains important discrepancies. Apart from a vague statement that she had been allegedly threatened with reprisals by a Kazakhstani official while in detention in Russia, she failed to provide any further information in that respect – such as which detention facility she was in, the date or circumstances in which that conversation or conversations had taken place, or any specific details about the conversation. As regards the applicant's reference to Mr Nazarbayev's statement that Mr Ablyazov's friends "should bear responsibility", and assessing it in its entirety, the Court cannot but observe that it was intended for a businessman who, among other people, in 2002 had signed a letter to Mr Nazarbayev in support of Mr Ablyazov's request for clemency, and it can hardly discern any link between that statement and the applicant, who never stated that she was one of those who had signed the letter or had otherwise militated for Mr Ablyazov's release, or that she had been involved in any political or opposition activities with him. The fact that she had replaced Mr Ablyazov as the head of a private company previously founded by him cannot be regarded as indicating that they were together in terms of any political involvement. The Court is therefore not persuaded that the impugned statement by Mr Nazarbayev can be regarded as indicative of a personal risk for the applicant of being subjected to treatment in breach of Article 3 of the Convention. The Court is likewise not convinced that the statement by the representatives of the Kazakhstani GPO during the media briefing concerning the criminal proceedings for misappropriation of BTA Bank property can be regarded as a factor substantiating the alleged risk of ill-treatment for the applicant. It notes at the same time that no resources made available to the Court contain any references to allegations of ill-treatment or torture or the risk of such treatment against former BTA employees either suspected of fraud or standing trial or having already been convicted on those fraud charges, nor do they suggest that people who have enjoyed "a relationship of trust" with Mr Ablyazov are at particular risk of torture or ill-treatment. Against this background the Court is not convinced that the labelling by

	Freedom House of the criminal proceedings against the former BTA management as "politically motivated" is in itself indicative of a risk specifically for the applicant of being subjected to torture, as alleged by her. *[paras. 206, 207, 208, 209]* 2. The fact that the applicant's circumstances, including his or her life expectancy, would be significantly reduced if he or she were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of Article 3 of the Convention. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3 of the Convention, but only in a very exceptional case, where there are compelling humanitarian grounds against the removal. The applicant is suffering from Type II diabetes and a number of related conditions, including hypertension. She furnished no medical evidence that her state of health was critical, and, having regard to the materials in its possession, the Court is not convinced that at the present moment her health problems should be considered so serious as to raise an issue under Article 3 the Convention. *[paras. 210 and 212]* 3. In the present case the Court is inclined to consider that the assurances given by the Kazakhstani authorities were more of a general nature. Moreover, whilst they contained a statement to the effect that competent Russian authorities would be allowed access to the applicant during the criminal proceedings against her, the Government failed to elaborate on that point and did not indicate if there existed any specific mechanisms – either diplomatic or monitoring – by which compliance with those undertakings could be objectively checked. Their vague reference to the fact that they had not encountered any problems in their previous cooperation with Kazakhstan in similar matters is not sufficient for the Court to dispel doubts about those assurances. *[para. 203]* 4. The only specific argument put forward by the applicant to substantiate her fear of being faced with a flagrant denial of a fair trial in Kazakhstan concerned the Kazakhstani courts' refusal to admit her lawyer to the criminal proceedings against her. However, the materials available to the Court indicate that on an unspecified date in 2009 the Kazakhstani investigating authorities severed the criminal case concerning the fraud charges against a number of former BTA Bank employees (case no. 0951701710002) and sent it for examination to the Almatinskiy District Court, whilst the charges against the applicant remained part of criminal case no. 095751701710001, which apparently has not yet been sent for trial. Accordingly, the Court is unable to find unreasonable the district court's refusal to admit the applicant's representative to the proceedings in the former case to which the applicant is not a party. The remainder of the applicant's allegations under this head are too general

	and vague, and that none of them is such as to substantiate her allegation that she would face a flagrant denial of a fair trial if removed to Kazakhstan. *[para. 223 and 224]* *[NOTE: The complaint and the Court's conclusions regarding lawfulness of the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*
Aswat v. United Kingdom No.: 17299/12 Type: Judgment Date: 16 April 2013 Articles: Y: 3 Keywords: – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Icelandic, Turkish	*Circumstances:* Extradition of a person suffering from paranoid schizophrenia from the United Kingdom to the United States of America for the purposes of prosecution for conspiracy to establish a *jihad* training camp. Interim measure complied with. *Relevant complaint:* The applicant's uprooting for placement in an as yet unknown and unidentified future environment, with a risk of placement in conditions of isolation, would not be compatible with Article 3 of the Convention. His detention in Broadmoor Hospital was essential for his personal safety and treatment. If extradited, convicted and sentenced he would be housed at ADX Florence in a single cell, where at best he would spend a significant part of each day alone. The conditions of isolation were likely to exacerbate his pre-existing mental illness. The applicant had a history of not eating and drinking while under stress and immediately after his transfer from HMP Long Lartin to Broadmoor he had experienced florid psychiatric episodes and a continuing refusal to take food and drink. He therefore submitted that there was a real risk that this behaviour would resume were he to be extradited to a different and potentially more adverse environment in a different country. Moreover, there was evidence to suggest that force feeding was employed at ADX Florence when inmates went on hunger strike and if used on the applicant it would likely cause him significant pain and distress. His prosecution in the United Kingdom *in lieu* of his extradition could be contemplated and achieved without the accompanying risks outlined above. *Court's conclusions:* The assessment of whether the particular conditions of detention are incompatible with the standards of Article 3 of the Convention has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment. The feeling of inferiority and powerlessness which is typical of persons who suffer from a mental disorder calls for increased vigilance in reviewing whether the Convention has (or will be) complied with. There are three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of

	an applicant. Whether or not the applicant's extradition to the United States would breach Article 3 of the Convention very much depends upon the conditions in which he would be detained and the medical services that would be made available to him there. However, any assessment of those detention conditions is hindered by the fact that it cannot be said with any certainty in which detention facility or facilities the applicant would be housed, either before or after trial. It is also unclear how long the applicant might expect to remain on remand pending trial. While the Court in *Babar Ahmad* did not accept that the conditions in ADX Florence would reach the Article 3 threshold for persons in good health or with less serious mental health problems, the applicant's case can be distinguished on account of the severity of his mental condition. In light of the current medical evidence, the Court finds that there is a real risk that the applicant's extradition to a different country and to a different, and potentially more hostile, prison environment would result in a significant deterioration in his mental and physical health and that such a deterioration would be capable of reaching the threshold of Article 3 of the Convention. With regard to the applicant's submission as to the appropriate forum for prosecution, the Court notes that the Government had stated that they do not intend to prosecute the applicant for any of the offences at issue. Consequently, the Court does not consider that the question of the appropriate forum for prosecution, and the relevance of this question to the Court's assessment under Article 3 of the Convention, arises for examination in the present case. *[paras. 48, 50, 52, 57]*
Azimov v. Russia No.: 67474/11 Type: Judgment Date: 18 April 2013 Articles: Y: 3, 5§1(f), 5§4 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Turkish	*Circumstances:* Extradition of a failed asylum seeker from Russia to Tajikistan for the purposes of criminal prosecution for anti-government armed conspiracy (membership in several opposition movements responsible for armed riots). The extradition request was accompanied by assurances that the applicant would not be subjected to torture or cruel, inhuman, degrading treatment or punishment. He would have all opportunities to defend himself in Tajikistan, including the right to legal assistance. He would not be persecuted on political grounds, or because of his race, religion, nationality or political views. In addition, assurances were given that the applicant would be prosecuted only in relation to the crimes mentioned in the extradition request, that he would be able to leave Tajikistan freely after standing trial and serving a sentence, and that he would not be expelled, transferred or extradited to a third State without the Russian authorities' consent. Simultaneous expulsion proceedings. UNHCR declared that, taking into account the fact that in Tajikistan the applicant is to be prosecuted in connection with criminal offences, there exists a real risk of torture for the applicant in the event of his expulsion to Tajikistan. Interim measure complied with. *Relevant complaints:*

	1. If returned to Tajikistan, the applicant would run a real risk of being subjected to ill-treatment in breach of Article 3 of the Convention. He relied on reports by UN agencies and trustworthy international NGOs and also referred to the cases of alleged ill-treatment in Tajikistan of persons he was linked to. Those individuals had been convicted of the same offences the applicant was charged with. All of them had been tortured with a view to, inter alia, extracting testimony against the applicant. The wording of the charges brought against the applicant showed that they were motivated by political considerations and religious hatred. 2. The assurances provided by Tajikistan were unreliable, due to the absence of any mechanism of compliance monitoring or any accountability for their breach. The applicant challenged the credibility of diplomatic assurances provided by the Tajikistani authorities, referring to two cases pending before the Court in which the applicants had allegedly been kidnapped and transferred to Tajikistan. They were then allegedly convicted by the Tajikistani courts of crimes not mentioned in the extradition requests. Furthermore, one of the applicants claims that he was subjected to ill-treatment during the pre-trial investigation to extract self incriminating statements. 3. The applicant referred to discrepancies in the documents describing the charges against him, and argued that the criminal case had been fabricated. *Court's conclusions:* 1. The Court emphasises that the task of the domestic courts in such cases is not to search for flaws in the alien's account or to trip him up, but to assess, on the basis of all the elements in their possession, whether the alien's fears as to the possible ill-treatment in the country of destination are objectively justified. The mere fact that the applicant failed to submit accurate information on some points did not mean that his central claim, namely that he faces a risk of ill-treatment in Tajikistan, is unsubstantiated. The Russian courts in the present case failed to explain how the flaws detected by them undermined the applicant's central claim. The Court's case-law under Article 3 of the Convention does not require domestic courts to establish with certitude that the asylum-seeker would be tortured if returned home – it needs only establish that there is a "real risk" of ill-treatment. The Court reiterates that 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 belonged to, that there was a high likelihood that he would be ill-treated. In the extradition proceedings the Russian courts did not attach any weight to the reports by the international organisations and NGOs, qualifying them as mere "opinions". The Court disagrees with this approach. The reports at issue are consistent, credible and come from various sources which are usually regarded as reputable. The Court emphasises that reference to a general problem concerning human rights observance in a particular country is normally insufficient to bar extradition, but the current human rights record of Tajikistan adds credibility to the applicant's assertion that, if extradited, he might be subjected to ill-treatment. *[paras. 121, 121, 128, 136, 137]* 2. The mere reference to diplomatic assurances, to membership of international treaties prohibiting torture, and to the existence of domestic mechanisms set up to protect human rights, is insufficient. In the modern world there is virtually no State that would not proclaim that it adheres to the basic international human rights norms, such as the prohibition of torture, and which would not have at least some protecting mechanisms at the domestic level. Those elements are important, but they should not be assessed formalistically. Where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention, the domestic courts should have a somewhat critical approach to diplomatic assurances and other similar "information from official sources". The Court is concerned about reported cases of ill-treatment of persons who have been extradited or forcibly returned to Tajikistan, apparently in breach of diplomatic assurances given by the Tajikistani authorities as reported by Amnesty International. The Court also notes that the assurances provided by the Tajikistani authorities did not include any monitoring mechanism. *[paras. 133 and 134]* 3. The Court acknowledges that within the extradition proceedings the Russian authorities and the courts were not required by law or by the Convention to investigate each and every element of the criminal case against the applicant. *[para. 118]* *[NOTE: The complaint and the Court's conclusions regarding lawfulness of the applicant's custody are similar to a number of the Court's previous decisions already summarized above (e. g. Nasrulloyev v. Russia, Ismoilov and others v. Russia, and Khudyakova v. Russia) and, therefore, have not been included in this summary.]*
K. v. Russia No.: 69235/11 Type: Judgment Date: 23 May 2013	*Circumstances:* Extradition of an asylum seeker from Russia to Belarus for the purposes of prosecution for aggravated robbery, aggravated kidnapping, including that of a minor, and extortion. Prosecutor General's Office of Belarus provided assurances to respect for the applicant's rights, including the right not to be subjected to torture, inhuman and degrading treatment and the right to a fair trial and that the

Articles: Y: 5§4, N: 3, 5§1(f) Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	applicant would stand trial only for the criminal offence in respect of which the extradition request had been made and that the criminal case against him had no political, religious, racial or other discriminatory motivation. Interim measure complied with. *Relevant complaints:* 1. Relying on the Court's judgments in which reports of various international NGOs on the situation in Belarus were cited, the applicant submitted that the human-rights situation in Belarus was worrying, the torture of detainees was not exceptional and that conditions in Belarusian detention facilities were inadequate. He further stressed that the reopening of the criminal proceedings against him in an attempt to link him with the crimes allegedly committed in 2000 and 2001 was an act of pure political persecution. He insisted that the statutory time-limit in respect of those crimes had expired in February 2011. He argued that the Belarusian authorities were attempting to punish him for his political views and his participation in peaceful demonstrations organised by the opposition party. The applicant also pointed out that the decision granting him temporary asylum in Russia amounted to an inadvertent acknowledgement by the Russian authorities that there was a serious risk of his being subjected to torture if extradited to Belarus. 2. Russian courts had failed to properly assess the risk that he would be subjected to torture, and had instead heavily relied on the assurances provided by the requesting country without checking whether they were reliable. 3. The domestic legal provisions regulating the applicant's detention had been unclear and the length of his detention unforeseeable. His detention had been unnecessary and could have been changed to a less coercive measure. Prior to authorising his detention, the Russian courts should first have thoroughly studied the human-rights situation in Belarus. However, they failed to analyse his particular circumstances in relation to the situation in Belarus and immediately authorised his detention, without balancing his right to liberty against their inter-State obligations. *Court's conclusions:* 1. The Court considers that the applicant's statement concerning his being a victim of political persecution in Belarus lacks substantiation. The Court observes that the applicant is wanted by the Belarusian authorities on charges of aggravated kidnapping, robbery and extortion, which, although grave, are ordinary criminal offences. The decisions by the Belarusian authorities describing the circumstances of the crimes and outlining the suspicions against the applicant are detailed and well-reasoned. Further, there is no reason to doubt the Russian courts' conclusion that the statutory time-limit for prosecuting the offences in question had not expired. Apart from a vague statement that he

	took part in the political activities of the opposition parties in Belarus from 1998 to 2000 and again in 2010, the applicant failed to provide any further information in that respect – such as details about his political activities, the dates and places of the opposition meetings, rallies and demonstrations, dates of his visits to Belarus to take part in the political life of the country, the nature of his alleged financial contribution, or any other relevant data to support his allegation that he was an active member of the opposition movement. The applicant's submissions that he had already been a victim of ill-treatment on his previous encounters with the Belarusian police are uncorroborated. Once again he omitted to provide any description of the alleged events, except for the torture technique allegedly used on him by police officers. In the Court's view, the lack of such information strips the applicant's submissions of credence. This conclusion is not altered by the fact that on 14 May 2012 the Russian FMS granted the applicant temporary asylum status. The Court interprets the decision of 14 May 2012 as no more than the Russian authorities' attempt to provide the applicant with a lawful basis on which to continue residing in Russia while the proceedings before the Court were pending. There is no evidence that members of the applicant's family were previously persecuted or ill-treated in Belarus. No inferences, beyond mere speculation, should be made in the present case from the alleged delay in bringing proceedings against the applicant in relation to the criminal offences committed in 2000 and 2001. The applicant's allegation that any criminal suspect detained in Belarus ran a risk of ill-treatment is too general. Having examined the available material and the parties' submissions, the Court considers that it has not been substantiated that the human-rights situation in Belarus is such as to call for a total ban on extradition to that country, for instance on account of a risk that detainees will be ill-treated. *[paras. 68, 69, 71 and 72]* 2. In the present case the Court is inclined to consider that the assurances given by the Belarusian authorities were more of a general nature. Moreover, the Government did not indicate whether there existed any specific mechanisms – either diplomatic or monitoring – by which compliance with those assurances could be objectively checked. Their vague reference to the fact that they had not encountered any problems in their previous cooperation with the Belarusian authorities in similar matters is not sufficient for the Court to dispel doubts about those assurances. In sum, the Court is not ready to give any particular weight to those statements in the present case. *[para. 65]* 3. In the present case, the Court observes that unlike in some previous Russian cases concerning detention with a view to extradition, the applicant's detention was authorised by a Russian court rather than a foreign court or a non-judicial authority. The applicant's detention was regularly

	extended by a competent court, in compliance with the time-limits set in Article 109 of the Russian Code of Criminal Procedure. *[para. 84]*
Rafaa v. France No.: 25393/10 Type: Judgment Date: 30 May 2013 Articles: Y: 3 Keywords: – extradition (grounds for refusal) – ill-treatment Links: French only Translations: not available	*Circumstances:* Extradition of a failed asylum seeker from France to Morocco for the purposes of prosecution for acting as an intermediary of internet communication and correspondence between various terrorist organizations. *Relevant complaint:* The applicant argued that his torture in Moroccan jails before his departure because of its commitment to the Saharawi cause justify his fear of ill-treatment in the event of his extradition to Morocco. Despite the willingness of the current King of Morocco to investigate violations of human rights committed under the aegis of his predecessor and make radical changes in the country, reports of non-governmental organizations and institutions show that the situation has not improved. *Court's conclusions:* Ill-treatment of persons suspected of involvement in terrorist activities in Morocco persists. The Court is of the opinion that, given the profile of the applicant, the risk of a breach of Article 3 of the Convention if returned is real. *[para. 41]* NOTE: in this case, the Court dealt with the admissibility of the application in the light of its introduction well before a final decision on the extradition was made in France. The Court stated that while in principle, the domestic remedies should have been exhausted before the Court is being solicited, it tolerates that the last level of remedies is reached after the application is made, but before a decision is taken as to the admissibility of the application. In this case, the application was indeed made before the 'décret d'extradition' was available. However, the 'décret' dates from 11 July 2011, which is before the Court decided on the admissibility. The Government stated that the applicant did not exhaust the domestic remedies, but failed to state what remedies the applicant failed to apply. *[para. 33]*
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	*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.

– family life (separation of family) Links: French only Translations: not available	*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]*
Sidikovy v. Russia No.: 73455/11 Type: Judgment Date: 20 June 2013 Articles: Y: 3; N: 5§1(f), 5§4 Keywords: – assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial	*Circumstances:* Extradition of two asylum seekers from Russia to Tajikistan for the purposes of prosecution for involvement in a criminal organisation (Hizb ut-Tahrir), inciting racial, ethnic or religious hatred or hostility and publicly calling for the overthrow of the political order or breach of the territorial integrity of Tajikistan. With regard to the first applicant, Tajikistan provided assurances that he would be provided with all means of defence, including the assistance of counsel, he would not be subjected to torture, cruel, inhuman or degrading treatment or punishment, he would not be subject to capital punishment, the extradition request does not pursue the goals of his persecution on the grounds of race, religion, ethnic origin or political views and he would be prosecuted only for the offences in respect of which he would be extradited to Tajikistan, he would not be extradited to another State without the consent of Russia and after the criminal proceedings and serving of his sentence he would be free to leave the territory of Tajikistan. Interim measure complied with. The first applicant had obtained Russian citizenship under false identity; the naturalization decision was, therefore, annulled *ab initio*. Request for extradition of the second applicant was refused owing to the expiry of the statutory limitation period

– ill-treatment Links: English only Translations: not available	in respect of the offence she was charged with. Their children were placed under the care of Russian social services. *Relevant complaints:* 1. If extradited to Tajikistan, the first applicant would be exposed to the risk of torture. He referred to the reports on Tajikistan issued by Amnesty International in 2012, the United States Department of State in 2011 and the End-of-mission Statement by the UN Special Rapporteur on Torture. He had been subjected to torture in Tajikistan in 2003 and pointed out that it had been the Court's practice to rely on diplomatic assurances from the Tajikistani authorities with caution. 2. The first applicant's detention for twelve months had not been in compliance with Article 5§1(f) of the Convention, as none of the decisions ordering the extension of his detention had contained reference to specific measures being taken in the furtherance of the extradition check. Furthermore, he reiterated that his arrest had been ordered by the Russian court in the absence of a request for his detention on the part of Tajikistani authorities or of any confirmation from them that they would subsequently seek his extradition. Moreover, neither the initial order nor the extension orders had indicated whether any measures with a view to the first applicant's extradition were being taken. The first applicant's lawyer's arguments had not been properly examined by the Russian court in its decisions and Chapter 13 of the Code of Criminal Procedure had not provided him with the ability to seek release between reviews of his detention which were instigated upon the request of the Prosecutor's Office. *Court's conclusions:* 1. The first applicant submitted no materials to support his allegations of having been subjected to ill-treatment in Tajikistan. Regard being had to the reports from various international bodies, and in line with its recent judgments, the Court considers that there are serious reasons to believe in the existence of the practice of persecution of members or supporters of Hizb ut-Tahrir, whose underlying aims appear to be both religious and political. The Government's reference to the fact that the first applicant did not apply for political asylum until the order for his extradition had been finally upheld by the domestic courts does not necessarily refute the first applicant's allegations of the risk of ill-treatment, since the protection afforded by Article 3 of the Convention is in any event broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees. Diplomatic assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated

	by the authorities which are manifestly contrary to the principles of the Convention. *[paras. 145, 149 and 150]* 2. The Tajikistani Ministry of Security placed the first applicant on a wanted list on 4 January 2005. The Tajikistani Prosecutor General's Office asked the Russian Prosecutor General's Office to extradite the first applicant on 29 December 2010. Between December 2010 and December 2011 the first applicant was interviewed; the Russian Prosecutor General's Office received the extradition request and the diplomatic assurances from its Tajikistani counterpart; the Federal Migration Service confirmed that the first applicant did not have Russian citizenship and that he had never registered his residence; and remand prison IZ-77/4 confirmed that the first applicant had not lodged any requests to be granted refugee status through it. After the extradition order had been granted by the Russian Prosecutor General's Office on 30 June 2011, it was reviewed by courts at two levels of jurisdiction, the final decision being delivered by the Supreme Court of Russia on 6 December 2011. The Court concludes that throughout the period between 7 December 2010 and 7 December 2011 the extradition proceedings were in progress and in compliance with domestic law. The first applicant has not adduced any specific argument contesting the effectiveness of the proceedings made available to him or substantiating any unfairness in those proceedings. Where detention is authorised by a court, subsequent proceedings are less concerned with arbitrariness, but provide guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention. Therefore, the Court would not be concerned, to the same extent, with the proceedings before the court of appeal if the detention order under review had been imposed – like in the present case – by a court and on condition that the procedure followed by that court had a judicial character and afforded to the detainee the appropriate procedural guarantees. The first applicant was able to raise on appeal various arguments relating to his detention, including those relating to the requirement of diligence in the conduct of extradition proceedings and the length of the authorised period, when a court examined the prosecutor's renewed request for extension of detention or on appeal against the detention order. *[paras. 164, 165 and 185]* *[NOTE: The complaint and the Court's conclusions regarding the alleged breach of the first's applicant's right to the presumption of innocence in the extradition proceedings are similar to a number of the Court's previous decisions already summarized above (e. g. Gaforov v. Russia) and, therefore, have not been included in this summary.]*
Vinter and others v. United Kingdom	*Circumstances:* Life sentences served in the United Kingdom.

Nos.: 66069/09, 130/10 & 3896/10 Type: Judgment [GC] Date: 9 July 2013 Articles: Y: 3 Keywords: – life sentence Links: English, French Translations: Albanian, Armenian, Azerbaijani, Czech, Georgian, German, Icelandic, Italian, Macedonian, Montenegrin, Polish, Romanian, Serbian, Spanish, Turkish Chamber Judgment: English, French (Translations: German, Italian)	*Relevant complaint*: Whole life orders (irreducible life sentences) violated Article 3 of the Convention. The Secretary of State's power of compassionate release was not such as to make a life sentence reducible. It was not a general power of release and involved no consideration of progress, rehabilitation, remorse or redemption. Compassionate release was, moreover, construed narrowly as applying only when the prognosis was death within three months and there was no risk to the public. The Secretary of State's power had never been exercised and could not be interpreted as allowing conditional release (i.e. release other than on compassionate grounds), which was what Article 3 of the Convention required. The Chamber's approach was flawed because it failed to address two issues: (i) the substantive Article 3 issue that the applicants' whole life orders constituted ill-treatment *ab initio*; and (ii) the procedural requirement for a review to be built into a whole life sentence to ensure there was no breach of Article 3 of the Convention. *Court's conclusions:* A life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arises under Article 3 if a life sentence is *de jure* and *de facto* reducible. Where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3 of the Convention. In the context of a life sentence, Article 3 of the Convention must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider 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. Where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention. Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 of the Convention in this regard. In cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 of the Convention on this ground

	already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration. *[paras. 108, 109, 119, 121, 122]* *[NOTE: The Court's conclusions in this case need to be adapted in extradition cases – see Sanchez-Sanchez v. the United Kingdom.]*
I v. Sweden No.: 61204/09 Type: Judgment Date: 5 September 2013 Articles: Y: 3 Keywords: – expulsion – ill-treatment Links: English only Translations: German, Icelandic, Turkish	*Circumstances:* Expulsion of failed asylum seekers, three Russian nationals of Chechen origin, from Sweden to Russia. *Relevant complaint:* The general situation for persons of Chechen origin in Russia is so serious that for that reason alone, it would amount to a violation of the invoked articles to return the applicants. Furthermore, the applicants individually faced a real and personal risk upon return, which the Swedish authorities had ignored when refusing to grant them asylum. The applicants' statements of the facts had been credible and reasonable, and had been supported by strong medical evidence that the first applicant had previously been subjected to torture. *Court's conclusions:* The unsafe general situation in Chechnya is not sufficiently serious to conclude that the return of the applicants to Russia would amount to a violation of Article 3 of the Convention. The crucial question is whether the isolated fact that a person has been subjected to torture suffices to demonstrate that he or she, if deported to the country where the ill-treatment took place, will face a real risk of being subjected again to treatment contrary to Article 3 of the Convention. The Court is aware that in R.C. v. Sweden, it found that since the asylum seeker in that case had proven that he had been subjected to torture, the onus rested with the State to dispel any doubts about the risk of his being subjected again to treatment contrary to Article 3 in the event that the expulsion were carried out. However, leaving aside deportations to countries where the general situation is sufficiently serious to conclude that the return of any refused asylum seeker thereto would constitute a violation of Article 3 of the Convention, the Court acknowledges that in order for a State to dispel a doubt such as mentioned in R.C. v. Sweden, the State must at least be in a position to assess the asylum seeker's individual situation. However, this may be impossible, when there is no proof of the asylum seeker's identity and when the statement provided to substantiate the asylum request gives reason to question his or her credibility. Moreover, the Court's established case-law is that in principle it is for the person to be expelled to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it. Accordingly, where an asylum seeker invokes that he or she has previously been subjected to ill treatment, whether undisputed or supported by evidence, it may nevertheless be expected

	that he or she indicates that there are substantial and concrete grounds for believing that upon return to the home country he or she would be exposed to a risk of such treatment again, for example because of the asylum seeker's political activities, membership of a group in respect of which reliable sources confirm a continuing pattern of ill treatment on the part of the authorities, a pending arrest order, or other concrete difficulties with the authorities concerned. The Court is aware of the reported interrogation of returnees and of harassment and possible detention and ill-treatment by the Federal Security Service or local law-enforcement officials and also by criminal organisations. Nevertheless, it considers that the general situation is not sufficiently serious to conclude that the return of the applicants thereto would constitute a violation of Article 3 of the Convention. The Court emphasises that the assessment of whether there is a real risk for the person concerned must be made on the basis of all relevant factors which may increase the risk of ill-treatment. In its view, due regard should also be given to the possibility that a number of individual factors may not, when considered separately, constitute a real risk; but when taken cumulatively and when considered in a situation of general violence and heightened security the same factors may give rise to a real risk. In their decisions of October 2008 and July 2009, the Migration Board and the Migration Court did not make a separate assessment of this specific risk in the applicants' case, notably that the first applicant has significant and visible scars on his body, including a cross burned into his chest. The medical certificates stated that his wounds could be consistent with his explanation both as to the timing (October 2007) and the extent of the torture to which he maintained he had been subjected, and in their judgment of 15 July 2009 the Migration Court contended that the first applicant's injuries had probably been caused by ill-treatment resembling torture. Thus, in case of a body search of the first applicant in connection with possible detention and interrogation by the Federal Security Service or local law-enforcement officials upon return, the latter will immediately see that the first applicant has been subjected to ill treatment for whatever reason, and that those scars occurred in recent years, which could indicate that he took active part in the second war in Chechnya. Taking those factors into account cumulatively, in the special circumstances of the case, there are substantial grounds for believing that the applicants would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if deported to the Russian Federation. *[paras. 58, 62, 66 through 69]*
Nizomkhon Dzhurayev v. Russia No.: 31890/11 Type: Judgment Date: 3 October 2013 Articles: Y: 3, 5§4, 34, 38	*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.

Keywords: – assurances – custody (judicial review) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: Georgian, Turkish	*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) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only	*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

Translations: not available	provided by the Uzbek authorities. Yet, those assurances 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	*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

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

Links: French only Translations: Czech	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 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	*Circumstances:* Extradition of an unsuccessful asylum seeker of ethnic Uzbek origin from Russia to the 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 Keywords: – 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. 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 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 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	*Circumstances:* Life sentence served in Hungary with no parole eligibility. *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	*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

– ill-treatment – relation between extradition and deportation or expulsion Links: English only Translations: not available	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.]*
Shcherbina v. Russia Nos.: 41970/11 Type: Judgment Date: 26 June 2014 Articles: Y: 5§1, 5§4, 5§5 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) Links: English only Translations: Turkish	*Circumstances:* Extradition from Russia to Kazakhstan. *Relevant complaints:* 1. The applicant's detention pending extradition from 28 February 2011 to 28 April 2011 was unlawful and tnat the review of the legality of his detention had not been "speedy". Articles 133 and 134 of the Code of Criminal Procedure had prevented him from seeking compensation for his unlawful detention since he did not belong to the list of persons entitled to such compensation. 2. The applicant's request for a review of the public prosecutor's detention order was not examined speedily, as required by Article 5 § 4 of the Convention. *Court's conclusions:* 1. The applicant's deprivation of liberty to which he was subjected was found to be unlawful at the domestic level. The domestic courts established in substance that the applicant had been deprived of his liberty in a manner that was not in accordance with a procedure prescribed by law, that is, in breach of the requirements of Article 5§1 of the Convention. A textual reading of the relevant provisions of the Civil Code suggests that not every unlawful detention leads to the strict liability of

	the State, but only such which can be characterised as "the unlawful application of a preventive measure in the form of placement in custody". The Court has already observed that "the Russian law of tort limits strict liability for unlawful detention to specific procedural forms of deprivation of liberty which include, in particular, deprivation of liberty in criminal proceedings and administrative punishment". The unlawful detention in the present case was imposed within extradition proceedings, not as a custodial measure within a criminal case opened in Russia. In the absence of special provisions concerning detention pending extradition, the Russian courts apply mutatis mutandis provisions of the Code of Criminal Procedure which regulate custodial measures. However, it is not certain whether they would be prepared to consider "unlawful detention pending extradition" an equivalent of "unlawful application of a preventive measure in the form of placement in custody", which undoubtedly gives rise to a strict liability. Thus, the Court finds that it was not certain whether the strict liability rules applied to the situation under examination. If the applicant was to prove the authorities' "fault", the question is what form of "fault" was required to trigger the liability of the State for the applicant's unlawful detention. The Court notes that the notion of "fault" is quite vague: it includes intentional behaviour as well as various forms of negligence. Furthermore, it is unclear whether under the law the applicant had to prove the fault of the prosecutor who issued the detention order, or the fault of the prosecution authority in general for an error committed by one of their employees. It's not the Court's role to give a definitive interpretation of the relevant provisions of Russian law on the liability of the State for unlawful detention within extradition proceedings. However, the law referred to by the Government as such is not sufficiently clear and left room for interpretation. Therefore, the Court is not persuaded that the applicant's claim for damages had prospects of success. Due to that uncertainty, the Court is prepared to conclude that a claim for compensation was not an "effective remedy" within the meaning of Article 35 of the Convention, and that the applicant cannot be blamed for not having used that legal avenue. Hence, the applicant did not have an "enforceable right to compensation" to which he was entitled under Article 5§5 of the Convention. *[paras. 47 and 53 through 55]* 2. The present case does not concern detention under Article 5§1(c) of the Convention but detention for the purposes of extradition governed by Article 5§1(f). Consequently, the rule established by Article 5§3 did not apply in the present case, and the authorities did not have an obligation to bring the applicant promptly before a judge. Even though the authorities had no obligation to bring the applicant before the judge on their own initiative and do it "promptly", the applicant had a right to "take proceedings" before the court and actively seek his release under Article 5§4 of the Convention.

	Once the detained person lodges an application for release, judicial review of the lawfulness of detention must follow speedily. The Court's case-law shows that the "speediness" requirement of Article 5§4 is not necessarily the same as the "promptness" requirement of Article 5§3. What is important, however, is the type of official body which authorised the detention. Where the original detention order was imposed by a court, i.e. by an independent and impartial judicial body in a procedure offering appropriate guarantees of due process, and where the domestic law provides for a system of appeal, the Court is prepared to tolerate longer periods of review in the proceedings before the second instance court. Thus, the Court has examined the speediness of the review of detention orders imposed by the first-instance courts within criminal proceedings, that is, for the purposes of Article 5§1(c) of the Convention, in a large number of cases concerning the Russian Federation. Appeal proceedings that lasted ten, eleven and sixteen days have been found to be compatible with the "speediness" requirement of Article 5§4. However, this case-law is not directly applicable in the present case since the original detention order was imposed by a prosecutor, and not a court. Whereas it is not contrary to the Convention that an initial detention order for the purposes of extradition is made by an administrative authority, if the domestic law so authorises, the question is how much time may elapse from the moment when the person detained on the basis of an order by an administrative authority (*in casu* – the prosecutor's office) lodges an application for release, and the moment when that application is examined by a court. In the present case that period amounted to sixteen days, namely between 30 March, when an application for release was introduced by the applicant, and 15 April 2011, when it was examined and decided upon by the first-instance court. The Court stresses that under Article 5§4 it is not concerned with the period between 28 February and 30 March 2011, i.e. before the lodging of the application for release. The Government alleged that a part of the delay under examination had been due to the fact that the prosecutor challenged the judge and the case needed to be adjourned. Indeed, the first hearing was scheduled for 8 April, whereas the second, conducted by another judge, took place on 15 April 2011. The Court, however, considers that even if the replacement of the judge was an objective necessity, it was still "imputable to the authorities" and hence does not reduce the period under consideration. As set out above, in cases where the original detention was imposed by a court and then reviewed by a higher court, a period of sixteen days might not raise an issue under Article 5§4 of the Convention. However, in the present case the original detention order was imposed not by a judge or another judicial officer but by a prosecutor who was not a part of the judiciary. The decision-making process which resulted with the detention order of 28 February 2011 did not offer the

	guarantees of due process: the decision was taken *in camera* and without any involvement of the applicant. In addition, as established by the reviewing court, the prosecutor acted *ultra vires* and had no powers to order the applicant's detention. The Court further observes that the applicant's case was not very complex and the courts should have had all necessary information to deal with it. There is no evidence that after the lodging of the application for release on 30 March the applicant contributed in any way to the duration of the detention proceedings and to the delay in the judicial review. In view of the above, and in the light of the specific circumstances of the present case the Court considers that the standard of "speediness" of judicial review under Article 5§4 of the Convention comes closer to the standard of "promptness" under Article 5§3. Therefore, the sixteen-days' delay in the judicial review of the detention order of 28 February 2011 was excessive. *[paras. 63 through 70]*
Harakchiev and Tolumov v. Bulgaria Nos.: 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 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	*See the summary of the similar case of Ismailov v. Russia (count 1).*
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 No.: 5614/13 Type: Judgment Date: 24 July 2014 Articles: Y: 3 Keywords:	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*

– 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) – extradition (procedure) – 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 family) Links: English only Translations: Icelandic	*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 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	*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

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	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]*
Trabelsi v. Belgium No.: 140/10 Type: Judgment Date: 4 September 2014 Articles: Y: 3, 34 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – interim measure – life sentence Links: English, French Translations: Albanian, Armenian, Azerbaijani, Bosnian, Czech, Georgian, German, Macedonian, Montenegrin, Polish, Romanian, Russian, Swedish, Turkish, Ukrainian	*[NOTE: This judgment was overruled by the Grand Chamber in Sanchez-Sanchez v. the United Kingdom.]* *Circumstances:* Extradition of a failed asylum seeker from Belgium to the United States of America for the purposes of prosecution on charges of terrorism. Interim measure not complied with. *Relevant complaint:* The applicant complained that his extradition to the United States of America exposed him to treatment incompatible with Article 3 of the Convention as two of the offences, on the basis of which his extradition had been granted, carried a maximum life prison sentence which was irreducible *de facto*, and that if he were convicted he would have no prospect of ever being released. The applicant argued that his only "hope of being released" lay in the prospects for the success, which were *de facto* non-existent "post-9/11", of a request for a Presidential pardon or sentence commutation. This possibility, which lay in the hands of the executive without judicial supervision, not only bore no resemblance to a guarantee but was also totally non-juridical. It was subject to changing public opinion and was based on no predefined minimum criteria. It was therefore diametrically opposed to the requirements of coherency and foreseeability established in the Vinter and others v. United Kingdom judgment. *Court's conclusion:* According to the Government, regard must be had to the fact that the applicant was extradited for the sole purpose of prosecution, that he has not yet been convicted and that it is therefore impossible to determine, before conviction, whether the point at which his incarceration would no longer serve any penological purpose would ever come, or to speculate on the manner in which, at that particular moment, the US authorities would implement the available mechanisms. In the Government's view, the fact that the Court held in Vinter and others v. United Kingdom that the starting time for determining conformity with Article 3 of the Convention was the date of imposition of the life sentence was irrelevant to the present case because the applicant has not yet been convicted. The Court considers that it must reject this argument because it in effect obviates the preventive aim of Article 3 of the Convention in matters of removal of aliens, which is to prevent the persons concerned from actually suffering a penalty or treatment of a level of severity proscribed by this provision. The Court reiterates that Article 3 requires Contracting States to prevent the infliction of such treatment or the implementation of such a penalty. Furthermore, the Court holds, as it has done in all extradition cases since Soering v. United Kingdom, that it must assess the risk incurred by the applicant under Article 3 *ex ante* – that is to say, in the present

	case, before his possible conviction in the United States – and not *ex post facto,* as suggested by the Government. The Court understands the US legal provisions referred to in the diplomatic note of 10 August 2010 provided by the US authorities as not providing for possible release on parole in the event of a life sentence, whether mandatory or discretionary, but infers that there are several possibilities for reducing such a sentence. The sentence can be reduced on the basis of substantial cooperation on the part of the prisoner in the investigation of his case and the prosecution of one or more third persons. It can also be reduced for compelling humanitarian reasons. Furthermore, prisoners may apply for commutation of their sentence or for a Presidential pardon under the US Constitution. Despite the express requirement stipulated on 10 June 2010 by the Indictments Division of the Brussels Court of Appeal in its opinion on the applicant's extradition, the US authorities have at no point provided an assurance that the applicant would be spared a life sentence or that, should such a sentence be imposed, it would be accompanied by a reduction or commutation of sentence. The US authorities' explanations concerning sentencing and their references to the applicable provisions of US legislation on sentence reduction and Presidential pardons are very general and vague and cannot be deemed sufficiently precise. None of the procedures provided for amounts to a review mechanism requiring the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on legitimate penological grounds. *[paras. 129, 130, 134, 135 and 137]*
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	*Circumstances:* Life sentence served in France.

No.: 40014/10 Type: Judgment Date: 13 November 2014 Articles: N: 3, 6§1 Keywords: – ill-treatment – life sentence Links: French only Translations: Czech, Icelandic, Turkish	*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 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]*
Khomullo v. Ukraine No.: 47593/10 Type: Judgment Date: 27 November 2014 Articles: Y: 5§1, 5§4 Keywords: – custody (lawfulness) – custody (length) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition from Ukraine to Russia. *Relevant complaints:* 1. The Russian prosecution authorities had not submitted an appropriate extradition request containing all the requisite information and documents until 30 August 2010, that is to say almost four and a half months after his arrest on 19 April 2010. As to their first such request of 30 April 2010, on which the domestic courts had relied in endorsing the applicant's continued detention, he contended that it had been incomplete and had eventually been rejected on 1 September 2010. The applicant therefore argued that his detention pending extradition had been unreasonably long and that he had not been protected from the arbitrariness of the authorities. 2. There had been no adequate or speedy judicial review of the lawfulness of his detention pending his extradition.In their review of the lawfulness of his detention, the Ukrainian courts had failed to give any consideration to the absence of any time-limits, even though that had been one of his key arguments. Similarly, he maintained they had ignored his argument that his detention had been devoid of any basis because of the delayed submission by the Russian authorities of the extradition request in his regard. It had taken the Ukrainian courts unreasonably long to review the lawfulness of his detention, which had further contributed to his lengthy detention caused by the aforementioned procrastination by the Russian authorities. *Court's conclusions:*. *[para. 60]*

	1. On 17 June 2010 the Code of Criminal Procedure of Ukraine was amended so as to provide a legal basis for extradition proceedings. Those amendments, however, did not affect the applicant during the period in question, as he continued to be detained by virtue of the decision of the Prymorskyy Court given on 21 May 2010. In the absence of any transitional arrangements for the aforementioned amendments, and given the lack of an adequate legal basis for detention pending extradition as at the date of the court decision in question, the Court considers that the applicant continued to be unlawfully deprived of his liberty during this period, too. It was admitted by the appellate court in its rulings of 8 July and 8 October 2010 that there had been an error in the application of the legislation in question. Specifically, the first-instance court had wrongly extended the applicant's extradition detention, whereas no such extension was possible. Instead, the legal provisions prescribed extradition detention which could last no longer than eighteen months. The Court considers such a technical error, which was recognised and remedied by the domestic courts, to be insufficient for rendering *ab initio* the respective period of the applicant's detention unlawful. Whilst certain matters may be clarified in the context of the extradition inquiry and the authorities need time for its completion. But they are under an obligation to be diligent. In the present case, there is no explanation as to why the Ukrainian authorities waited for four months before clarifying the extradition request in respect of the applicant. The Court therefore considers that the due diligence requirement has not been met. *[paras. 59, 62, 63 and 69]* 2. Having regard to the obligation on the part of the authorities to ensure expeditious judicial review of the lawfulness of the applicant's detention in the light of the amendments in question, the Court does not consider that in the circumstances of the present case the thirteen-day delay to be compatible with the "speediness" requirement of Article 5§4.Even though the appellate court quashed the impugned ruling on 8 July 2010, it omitted to examine any of the applicant's arguments and, in particular, whether the length of his detention exceeded what was reasonably required for the completion of the inquiry. The Court next observes that the Malynivskyy Court delivered a new decision concerning the lawfulness of the applicant's continued detention on 30 July 2010, that is to say twenty-two days after the appellate court had remitted the case for a fresh examination. It appears that the hearing, which was initially scheduled for 21 July, had to be adjourned till 30 July 2010 because of the applicant's request that a lawyer be appointed for him. However, the responsibility for this delay cannot be attributed to the applicant, since the prosecutor's office waited until 27 July 2010 before lodging a new application concerning the applicant's extradition detention in line with the ruling of 8 July 2010. No assessment was made as regards the reasonableness of the applicant's

	continued detention. Furthermore, the Court does not find it insignificant that the Malynivskyy Court referred to the extradition request pertaining to the applicant dated 11 May 2010, without mentioning that of 29 (30) April 2010. The obvious failure of the Malynivskyy Court to properly analyse the situation regarding the extradition requests, their dates and their contents, undermines the thoroughness of its assessment as to whether there were any impediments to the applicant's extradition to Russia. The Court finds it striking that the respective ruling remained silent about those complaints altogether, failing to mention any of the applicant's arguments, let alone responding to them. The Court is mindful of the applicant's apparent failure to appeal against the decision concerning his extradition in accordance with the established procedure. At the same time, it remained within his rights to seek the judicial review of the lawfulness of his detention. In the Court's opinion, the manner in which the Malynivskyy Court dealt with his repeated complaints cannot be considered compatible with the effective judicial review principles enshrined in Article 5§4 of the Convention. *[paras. 83 through 86, 88 and 89]* *[NOTE: The complaint and the Court's conclusions regarding the applicants' custody prior to 17 June 2010, when Ukrainian legislation was amended, are similar to a number of the Court's previous decisions already summarized above (e. g. Soldatenko v. Ukraine) and, therefore, have not been included in this summary.]*
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	*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.

Keywords: – discrimination – extradition (effective remedies) – extradition (grounds for refusal) – extradition (procedure) – fair trial – family life (separation of family) – ill-treatment – nationality Links: French only Translations: not available	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. 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	*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:*

Keywords: – assurances – expulsion – extradition (grounds for refusal) – ill-treatment – presumption of innocence – relation between extradition and deportation or expulsion Links: English only Translations: not available	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. 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 Keywords: – expulsion – ill-treatment Links: English only Translations: Czech, Swedish	*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 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	*See the summary of the similar case of Ismailov v. Russia.*

– ill-treatment – relation between extradition and deportation or expulsion Links: English only Translations: not available	
Tatar v. Switzerland No.: 65692/12 Type: Judgment Date: 14 April 2015 Articles: N: 3 Keywords: – expulsion – ill-treatment Links: English only Translations: Czech, Turkish	*Circumstances:* Expulsion of a person, suffering from schizophrenic disease syndrome, from Switzerland to 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	*See the summary of the similar case of Kasymakhunov v. Russia.*

No.: 20999/14 Type: Judgment 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]*
Ibragimov v. Slovakia No.: 65916/10 Type: Decision Date: 30 June 2015 Articles: N: 3, 6§1, 13 Keywords: – assurances – asylum – extradition (grounds for refusal) – fair trial – ill-treatment Links: English Translations: not available	*Circumstances:* Extradition of one of two Russian nationals of Chechen ethnic origin from Slovakia to Russia. Both applicants were suspected of taking part as members of an organised group, in the killing of two agents of the Ministry of the Interior in Grozny in June 2001. The applicant's asylum claim was pending. *Relevant complaints:* 1. The applicant complained under Article 3 of the Convention that, as a person of Chechen origin and former active combatant, he would be exposed to the risk of torture and his live would be under threat in the event of his extradition. In that regard, he maintained that unenforceable bilateral diplomatic assurances from one Government to another did not provide a reliable safeguard against serious human rights violations, such as ill treatment. 2. The applicant also complained under Article 6§1 of the Convention that the criminal charges against him in Russia were invented and based on statements obtained under torture and that he would not benefit from the guarantees of a fair hearing in the event of his extradition to Russia. *Court's conclusions:* 1. The applicant does not appear to have challenged the final decision of the Supreme Court of 26 March 2008 concerning his original request for asylum before the Constitutional Court. The risk of treatment contrary to Article 3 of the Convention in the event of his extradition had thus principally received complete examination by the Supreme Court and the Constitutional Court in the context of the proceedings on his extradition and that the compatibility of that examination with the Convention requirements was specifically the subject matter of the Court's assessment in its decision of 14 September 2010 on the admissibility of the applicant's application no. 51946/08. As regards the proceedings on the applicant's extradition and their outcome, in the present application no new relevant elements have been introduced in relation to those known to the Court already at the time of its decision of 14 September 2010. Its assessment of those proceedings therefore does not stand open to review. In its decision of 14 September 2010 the Court ascribed significant importance to the guarantees provided by the Office of the Prosecutor General of the Russian Federation. The guarantees in question were specific and subject to diplomatic monitoring by the respondent Government. Subsequent to the Court's decision of 14 September 2010, the OPGRF has confirmed

	the validity of all such guarantees vis-à-vis the respondent Government, as well as vis-à-vis the Court. Moreover, in so far as the guarantees offered prior to the Court's decision of 14 September 2010 concerned Mr Chentiev, the respective authorities of the respondent Government have acted upon them by visiting him Mr Chentiev and establishing that these guarantees are in fact being respected. In these circumstances, the Court finds little room for doubting that the assurances of OPGRF would equally be respected. In the Court's assessment, the validity of these guarantees has not been undermined by the other individual cases and additional material from various sources relied on by the applicant. In that regard, the Court first of all reiterates – as it did in its decision of 14 September 2010 – that a mere possibility of ill-treatment in circumstances similar to those obtaining in the present case is not in itself sufficient to give rise to a breach of Article 3. As regards the witness Mukayev, whose statements had given rise to the applicant's prosecution and whose own application before the Court is still pending, the Court considers, as it did in its decision of 14 September 2010, that his alleged ill-treatment does not constitute proof that the applicant would be subjected to treatment incompatible with Article 3 of the Convention. As to the other material submitted by the applicant, the Court is of the opinion that its relevance is diminished by the fact that it dates to and refers to events having taken place in 2011 and earlier, while the risk of ill-treatment in the present application, in which the applicant has not yet been removed from the respondent State, is to be assessed with reference to the circumstances obtaining a the present time. *[paras. 62, 63 and 69 through 74]* 2. In view of all the material before it, including the specific and renewed assurances provided by the requesting State vis-à-vis the respondent Government as well as the Court itself, the Court has found no reasons for reaching a different conclusion in respect of the complaint under Article 6 of the Convention from that reached in its decision of 14 September 2010. *[para. 84]*
Kaytan v. Turkey No.: 27422/05 Type: Judgment Date: 15 September 2015 Articles: Y: 3 Keywords: – ill-treatment – life sentence Links: English only	*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

Translations: Turkish	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) – ill-treatment Links: English only Translations: not available	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*
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:	*See the summary of the similar case of Gayratbek Saliyev v. Russia.*

– assurances – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	
Mironovas and Others 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	*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.*
Nasr and Ghali v. Italy No.: 44883/09 Type: Judgment Date 23 February 2016 Articles: Y: 3, 5, 8, 13 Keywords: – extradition (effective remedies) – extraordinary rendition Links: French Translation: Italian	*Circumstances:* The case concerned an extrajudicial transfer (or "extraordinary rendition"), namely the abduction by CIA agents, with the co-operation of Italian secret service officials, of the Egyptian imam Osama Mustafa Hassan Nasr, also known as Abu Omar, who had been granted political asylum in Italy, and his subsequent transfer to Egypt, where he was held in secret for several months. It is to be noted that criminal proceedings were pending against the applicant in Italy. Mr Nasr was suspected, among other offences, of conspiracy to commit international terrorist acts, and his links to fundamentalist networks were investigated by the Milan public prosecutor's office (later on, on 6 December 2013, the Milan District Court convicted Mr Nasr of membership in a terrorist organisation). Mr Nasr was abducted and taken to the Aviano NATO air base operated by USAFE (United States Air Forces in Europe), where he was put on a plane bound for the Ramstein US air base in Germany and finally brought to Egypt where he was ill-treated and tortured. Ms Ghali had reported her husband's disappearance to the police. The public prosecutor's office in Milan immediately started an investigation into abduction by an unknown person or persons. Following the investigation, a number of Italian secret services officials and American CIA agents were prosecuted and tried. No extradition for prosecution was ever sought in regard

	to the 22 American citizens sought by Italian justice. The Italian Prime Minister stated that the information and documents requested by the public prosecutor's office were covered by State secrecy and that the conditions for lifting that secrecy were not met. In a judgment of 18 March 2009 the Constitutional Court held that the interests protected by State secrecy took precedence. The case against the Italian officials had to be discontinued because of the secrecy imposed. 22 CIA operatives and high-ranking officials, and one US army officer, were convicted *in absentia* of Mr Nasr's abduction and were given prison sentences of between six and nine years. *Relevant complaint:* Mr Nasr's complaint concerned his abduction, in which the Italian authorities had been involved, the ill-treatment to which he had been subjected during his transfer and detention, the fact that those responsible had been granted impunity owing to the application of State secrecy, and the fact that the sentences imposed on the convicted US nationals had not been enforced because of the refusal of the Italian authorities to request their extradition. Both applicants alleged, among other violations, a breach of Article 8 (right to respect for private and family life) in that Mr Nasr's abduction and detention had resulted in their forced separation for over five years. *Court's conclusions:* The Court found that there was a violation of Article 3 to that regard, and also in relation to Articles 8 and 13 of the Convention. As to the last issue, the Court mentioned that Italy did not ensure the respect of the right of the applicants to have an effective inquiry conducted on the abduction due to the position of the Italian defendants because of the imposition of secrecy and due to the position of the American CIA and diplomatic officials because of the refusal to ask for extradition in view of prosecution to the USA. The refusal to seek the surrender of the American citizens after the sentence became final was also deemed to be contrary to Article 13 and resumed as ensuring the impunity of people involved. *NOTE: The Court's decision is to be considered relevant as case-law for the following reasons: 1. Italy was considered responsible for not having sought extradition from the USA; 2. Italy was considered responsible for not having asked for extradition to the USA; 3. Italy was considered responsible because the President of the Republic granted pardons to some of the sentenced American persons. The interest of the decision lies in particular in the fact that the granting of pardons is traditionally considered to be a sovereign power; according to the Court's judgment, such a decision can be scrutinized by the Court. Likewise, any political decision, such as a decision on granting or refusing extradition, may be under scrutiny as well.*
Kholmurodov v. Russia No.: 58923/14	*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

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	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	*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

Links: English, French Translations: Azerbaijani, Czech Chamber Judgment: English, French (Translations: Czech, German, Swedish, Turkish)	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)	*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.

– extradition (grounds for refusal) – fair trial – ill-treatment – life sentence Links: English only Translations: not available	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.*
J. K. and Others v. Sweden	*Circumstances:* Deportation of failed asylum seekers from Sweden to Iraq.

No.: 59166/12 Type: Judgment [GC] Date: 23 August 2016 Articles: Y: 3 Keywords: – expulsion – ill-treatment Links: English, French Translations: Czech, Greek, Polish, Romanian Chamber Judgment: English, French (Translations: Czech, Swedish, Turkish)	*Relevant complaint:* The applicants complained that their return to Iraq would entail a violation of Article 3 of the Convention. The applicants argued that in its Chamber judgment the Court had decided to place the entire burden of proof on the applicants and had not granted them the benefit of the doubt. It had chosen to ignore parts of the applicants' evidence, finding that the last threat from al-Qaeda had occurred in 2008. Concerning the threats from 2008 onwards, the applicants claimed that the Swedish authorities and courts had dismissed the evidence submitted by them and had found that it was not likely that there were threats against the first applicant in his home country. The domestic authorities had categorically dismissed the evidence submitted by the applicants without making any effort to investigate its veracity. The applicants pointed out that the Qualification Directive had established a "benefit of the doubt" rule for asylum-seekers regarding evidence submitted in support of their asylum cases. If an asylum-seeker's general credibility was not called into question, he or she should make an honest effort to support his or her oral submissions. In the assessment of the credibility of the submissions, importance should be placed on whether they were coherent and not contradictory, and whether their essential elements remained unchanged during the asylum proceedings. In the first applicant's case there had been no reason to call his credibility into question. There had been a natural reason for invoking his political activities late in the asylum process: he had not been afforded an opportunity to give a complete account of his arguments in his asylum interview and therefore he had focused on the most urgent threat, namely that posed by al-Qaeda. Available country information suggested that former employees of the American troops were placed in a vulnerable situation. Besides being regarded as traitors to their homeland by al-Qaeda, they were now also under threat from ISIS, who saw them as direct targets. Many former collaborators had lost their lives in areas under ISIS control. *Court's conclusions:* The Court is satisfied that the applicants' account of events which occurred between 2004 and 2010 is generally coherent and credible. Having regard to the fact that the applicants had been subjected to ill-treatment by al-Qaeda, the Court finds that there is a strong indication that they would continue to be at risk from non-State actors in Iraq. It is therefore for the Government to dispel any doubts about that risk. The complex and volatile general security situation, the Iraqi authorities' capacity to protect their people must be regarded as diminished. Although the current level of protection may still be sufficient for the general public in Iraq, the situation is different for individuals, such as the applicants, who are members of a targeted group. The Court is therefore not convinced, in the particular circumstances of the applicants' case, that the Iraqi State would be able to provide them with effective protection against threats by al-Qaeda or other private groups in the current situation. The cumulative effect of the applicants' personal circumstances and the Iraqi authorities' diminished ability to protect

	them must therefore be considered to create a real risk of ill-treatment in the event of their return to Iraq. *[paras. 111, 114, 115 and 121]*
Khamroev and Others v. Ukraine No: 41651/10 Type: Judgment Date: 15 September 2016 Articles: Y: 5§1 Keywords: – asylum – custody (lawfulness) – custody (length) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition of four persons from Ukraine to Uzbekistan. The applicants sought asylum in Ukraine, Sweden and the USA. UNHCR recognized three of the applicants as refugees. One of the applicants was granted asylum in Sweden and one in the USA. Asylum requests in Ukraine were partly denied and partly pending. Interim measure complied with. *Relevant complaint:* The extradition inquiry had not been conducted with due diligence, rendering the applicants' detention contrary to Article 5§1(f). *Court's conclusions:* On 17 June 2010 the Code of Criminal Procedure of Ukraine was amended to provide a legal basis for extradition proceedings and detention in the context of extradition. However, on 17 June 2010 the domestic court extended the first applicant's detention on the basis of the provisions of domestic law as they stood before 17 June 2010, without referring to the amendments which came into force the same day. The amendments, therefore, did not affect the applicant until 24 June 2010. The Court considers that the applicant continued to be unlawfully deprived of his liberty during that period too. The fact that asylum proceedings which could have resulted in the grant of refugee status and barred the applicants' extradition were pending in respect of the applicants, did not change the fact that, at least as of 22 November 2010, the domestic authorities had sufficient information in their possession to reach a conclusion that there was a high likelihood that another, independent, obstacle to extradition existed. That was a possibility which they were under an obligation to explore with due diligence and there is no satisfactory explanation for their delay in doing so. Therefore, after 22 November 2010 the proceedings for the applicants' extradition were not conducted with requisite diligence. *[paras. 88, 97 and 98]* *[NOTE: The complaint and the Court's conclusions regarding the applicants' custody prior to 17 June 2010, when Ukrainian legislation was amended, are similar to a number of the Court's previous decisions already summarized above (e. g. Soldatenko v. Ukraine) and, therefore, have not been included in this summary.]*
T.P. and A.T. v. Hungary No.: 37871/14 & 73986/14 Type: Judgment Date: 4 October 2016 Articles: Y: 3 Keywords: – ill-treatment	*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

– life sentence Links: English only Translations: not available	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. 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 Type: Judgment [GC] Date: 20 October 2016 Articles: Y: 3; N: 3 Keywords: – ill-treatment Links: English, French Translations: not available Chamber Judgment: English, French (Translations: Czech, Italian, Slovenian, Turkish)	*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.*
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 Chamber Judgment: English, French (Translations: Italian, Turkish)	*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 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 Chamber Judgment: English, French (Translation: Turkish)	*Circumstances:* Life sentence served in the United Kingdom. *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	*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

Articles: N: 8, 14 Keywords: – discrimination – expulsion – family life (separation of family) – nationality Links: English only Translations: not available	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) – ill-treatment Links: French only Translations: Romanian	*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 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*
Vasiliciuc v. the Republic of Moldova No.: 15944/11 Type: Judgment Date: 2 May 2017 Articles: Y: 5§1 Keywords: – custody (lawfulness) – extradition (custody)	*Circumstances:* The applicant, a Moldovan citizen living in Greece, was stopped at the Chisinau Airport when returning to Greece and a number of pieces of jewellery made of precious metals and stones was found in her possession, which she had failed to declare in her customs declaration. The applicant missed her flight and spent two weeks in Moldova during which time she went to the police station on several occasions. She was not detained in Moldova and decided to return to Greece because she could no longer be absent from work. She informed the authorities about her intention to leave the country and obtained their permission. She had no difficulties in leaving the country through the same airport. After her departure, Moldovan police formally initiated criminal proceedings against the applicant for attempted smuggling of jewellery. The offence carried maximum penalty of 6,000 Moldovan lei (approximately

Links: English only Translations: Romanian	EUR 430) or 240 hours community service or imprisonment of two years. The Moldovan authorities, without attempting to contact and summon her from Grecce, issued a detention order in respect of the applicant. After the applicant learned about the detention order, she employed a Moldovan lawyer to challenge it but the appeal was dismissed. In July 2011, the applicant was arrested in Greece, on the basis of the Moldovan detention order communicated to them via Interpol, for the purposes of extradition proceedings. The extradition proceedings ended on 21 September 2011 when the Athens Court of Appeal rejected the Moldovan authorities' extradition request and ordered the applicant's release from detention. The Athens Court of Appeal found that according to Article 5 of the European Convention on Extradition, persons suspected of offences in connection with taxes, duties and customs could be extradited only if the Contracting Parties have so decided in respect of any such offence or category of offences. In the absence of any such agreement between Moldova and Greece, the extradition request could not be upheld. *Relevant complaint:* The applicant's detention ordered by the Moldovan authorities was not necessary because the reasons relied upon by the Moldovan courts to order her detention pending trial and to dismiss her habeas corpus application had not been relevant and sufficient. *[NOTE: The application was submitted to the Court already before the applicant's arrest in Greece and originally concerned only the domestic proceedings in Moldova.]* *Court's conclusions:* In so far as Greece is concerned, the applicant's detention for twenty-three days fell within the ambit of Article 5§1(f) of the Convention, namely it was detention with a view to extradition. However, the Court was not assessing the responsibility of Greece for the lawfulness of the deprivation of liberty under Article 5§1(f), but the responsibility of Moldova for that detention, that is the "international arrest warrant issued by Interpol" at the request of the Moldovan authorities for the purpose of enforcing the detention order of 19 June 2009. It is without doubt that the applicant's deprivation of liberty in Greece was a direct consequence of that detention order and that no deprivation of liberty in Greece would have been possible in the absence of that order issued by the Moldovan courts. This fact was expressly noted by the Greek courts in their decisions concerning the applicant's extradition, where they made specific reference to the Botanica District Court's decision on 19 June 2009. The Court therefore considered that the applicant's detention in Greece, although formally for the purpose of her extradition, was part of the mechanism used by the Moldovan authorities to implement the Botanica District Court's decision of 19 June 2009 outside Moldova's borders and to bring the applicant before a competent Moldovan legal authority on reasonable suspicion of having committed an offence. Therefore, as regards Moldova, the applicant's detention had to be examined under Article

	5§1(c) of the Convention. Had it been otherwise, the applicant would remain without the protection of Article 5 of the Convention. *[paras. 37 and 38]*
A. I. v. Switzerland No.: 23378/15 Type: Judgment Date: 30 May 2017 Articles: Y: 2, 3 Keywords: – expulsion – ill-treatment Links: French only Translations: not available	*Circumstances:* Deportation of a failed asylum seeker from Switzerland to Sudan. *Relevant complaint:* The applicant's life may be jeopardized in the event of his return to Sudan. In particular, he is in risk of being interrogated, detained and tortured by NISS agents upon arrival at Khartoum airport. Those who oppose the Sudanese regime, irrespective of their political profile, are at risk of persecution because of the systematic monitoring of political activities in exile by the Sudanese authorities. The applicant has been an active member of the Swiss JEM section since his arrival in Switzerland in the summer of 2012 and of the DFEZ, having represented both organizations during his two years of participation in the Geneva Summit for Human Rights and Democracy, the events they organize, meeting with prominent opposition figures in exile and being in personal contact with the JEM leader. He would be all the more exposed since he became, in March 2015, a media officer in the Swiss section of the JEM. With regard to his identity, the applicant conceded that he had given a false date of birth at the hearing on his person but claimed that he had submitted his birth certificate, pointing out that the Swiss authorities had taken no steps to verify their authenticity or had specified any indication that it was a forgery. *Court's conclusions:* While the political profile of the applicant can not be characterized as highly exposed, in particular because he has never made a speech on behalf of an opposition organization at these conferences, account should be taken of the situation specific to the Sudan. It appears that individuals who are at risk of ill-treatment are not only the opponents of the marked profile, but any person opposing or being suspected of opposing the regime. The Sudanese government does monitor the activities of its political opponents abroad. The applicant cannot, on the basis of the photographs of the applicant alone, accompanied by the leader of the JEM, on the margins of meetings of that movement, claim personal or family ties with prominent members of the opposition in exile of a nature to put him in danger. However, the applicant has, through his involvement in the JEM, had to deal with the leaders of the Swiss branch of the movement on a regular basis. In view of the foregoing, the Court can not rule out that the applicant, as an individual and as a result of his political activities in exile, has attracted the attention of the Sudanese intelligence services. Therefore, there are reasonable grounds to believe that the applicant would be in danger of being detained, interrogated and tortured upon arrival at Khartoum airport and it would be impossible for him to relocate within the country. Accordingly, the Court considers that there would be a violation of Articles 2 and 3 of the Convention in the event of the applicant's removal to Sudan. *[paras. 56 through 58]*

N. A. v. Switzerland No.: 50364/14 Type: Judgment Date: 30 May 2017 Articles: N: 2, 3 Keywords: – expulsion – ill-treatment Links: French only Translations: not available	*Circumstances:* Expulsion from Switzerland to Sudan. *Relevant complaint:* The applicant alleged a risk of assassination by the Sudanese security services or the Sudanese armed forces in the event of his return to his country of origin. He recalled that he had indicated to the Swiss authorities on several occasions that traces of torture were still visible on his body and that he had scars corroborating his allegations that he had been imprisoned and tortured by the Sudanese security forces for reasons of his links with the Movement for Justice and Equality (JEM). The applicant claimed to have become a member of the JEM in Switzerland and to have been actively involved for the Sudanese people, claiming that his activism in the JEM, including his meeting with the JEM leader, and his engagement at the Geneva Summit for Human Rights and Democracy, made him run a real risk of persecution, regardless of his origin. He asserted that even opposition members without a marked profile were at risk of ill-treatment if they return to Sudan. He alleged that the Government ignored the fact that the Sudanese authorities routinely monitor the activities of the Sudanese diaspora and that they are also interested in political opponents whose commitment is less strong. JEM members are particularly vulnerable because the movement is militarily fighting the Sudanese government. *Court's conclusions:* The Court has not identified any evidence to challenge the assessment of the domestic authorities that the applicant's allegations did not meet the plausibility requirements. The latter did not claim to have been politically active in the opposition while living in Sudan and was able to leave his country of origin legally, via Khartoum International Airport, soon after having extended his passport. He also did not claim to have been politically active during his stay in Greece for several years. The Court therefore considers that there is no evidence of any interest by the Sudanese authorities in the applicant while he was still residing in Sudan or abroad before he arrived in Switzerland. The JEM is one of the main rebel movements in Sudan and that the Sudanese authorities perceive it as increasingly dangerous because of its legitimacy in connection with the Darfur conflict, leading to more severe behavior by the Sudanese authorities against JEM members. The applicant's membership in the JEM for several years is therefore a risk factor for persecution. The applicant's political activities in Switzerland have been documented since October 2013, for more than three years; however, his political commitment has not really increased over time. Moreover, the applicant's political profile in the opposition to the Sudanese regime in general and the JEM in particular can not be described as highly exposed. Indeed, the applicant does not occupy an exposed position within JEM, he never represented this movement, his name was not mentioned and he was not active on the internet. Although the applicant claimed to have participated in the Geneva Summit for Human Rights and Democracy, he does not claim to have represented the JEM on that occasion. The Court therefore considers that his political activities in

	Switzerland, limited to those of a mere participant in the activities of the opposition organizations in exile, were not likely to attract the attention of the Sudanese intelligence services. The alleged publication on the internet of the applicant's photographs alongside the JEM leader and the alleged participation of the applicant in a radio program can not suffice to call that assessment into question. The same is true of the photographs attesting to the applicant's participation in the various events mentioned above. The applicant can not claim personal or family ties with prominent members of the opposition in exile likely to put him in danger. The Court is of the view that the applicant's political activities in exile, which are limited to those of a mere participant in the activities of the organizations of the opposition in exile, are not reasonably likely to draw the attention of the intelligence services on his person and, therefore, considers that the applicant does not incur any risk of ill-treatment and torture in case of return to Sudan because of his activities. *[paras. 47 through 51]*
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 Chamber Judgment: not available (jurisdiction relinquished by the Chamber to the Grand Chamber)	*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 complaints:* 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. 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. 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. 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. 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]*
D. L. v. Austria No.: 34999/16 Type: Judgment Date: 7 December 2017 Articles: N: 2, 3 Keywords: – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Austria to Kosovo. Interim measure complied with. *Relevant complaint:* The applicant complained under Articles 2 and 3 of the Convention that he would run risk of torture, inhuman or degrading treatment or even death if he were extradited to Kosovo, as the Kosovo authorities were not willing or able to afford him protection from S.Lu. and his clan (blood feud). *Court's conclusions:* Even if one assumed that there was an ongoing blood feud involving the applicant in Kosovo, his situation is different from that of individuals in liberty, as he would be in a prison, where he would be monitored by the authorities twenty-four hours a day. Contrary to what the applicant alleged, the international reports on Kosovo do not indicate that the issue of corruption among detention officers was so widespread and systematic that third parties could exert any amount of influence there. The issue rather arises in the context of favouritism, concerning the use of mobile phones and other contraband, or unwarranted privileges, but none of the international reports consulted mention any instance of a prison officer being bribed into allowing a blood-feud killing to be carried out in prison (contrary to what the applicant suggested could be the case with him and the Lu. clan). It appears that Sm. Lu., to whom the applicant referred to in particular in his appeal of 24 March 2016, was no longer detained in prison in Kosovo. There is no further indication that a member of the Lu. clan was detained in prison in Kosovo, in Mitrovica prison in particular or that the Kosovo authorities were not able to protect the applicant against such person. The Kosovo authorities have already demonstrated – even specifically with regards to the applicant – that they were indeed capable of responding to threats against him, specifically by

	convicting S.Lu. of aggravated threat. It safe to conclude that the Kosovo authorities would be willing and able to equally respond to any new threats against the applicant while in prison. *[paras. 63 and 64]*
López Elorza v. Spain No.: 30614/15 Type: Judgment Date: 12 December 2017 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: Spanish	*Circumstances:* Extradition from Spain to the United States of America for the purposes of prosecution for drug trafficking. Interim measure complied with. *Relevant complaints:* 1. The applicant's extradition to the United States of America would expose him to treatment incompatible with Article 3 of the Convention as he faced a disproportionately long prison sentence in the United States (two sentences of life imprisonment). He argued that the guarantees provided by the US Government were insufficient. 2. The applicant further argued that all the subsequent documents submitted by the US Government (after the application of an interim measure by the Court) should not be taken into account in the analysis of the case since the Court was not a "Court of fifth instance". *Court's conclusions:* 1. The US Sentencing Guidelines recommend a fixed-term sentence between 15 years and 19 years and 7 months for the offences at issue, which is well below the maximum sentence of life imprisonment in respect of the charges against the applicant. It is true that the Sentencing Guidelines are merely advisory and that judges have discretion to impose a sentence outside the applicable range. However, the applicant has not advanced any reasons as to why the advisory sentencing range would not be applied in his case. In any event, in the unlikely case of the applicant being sentenced to life imprisonment, he could appeal against any sentence which was imposed as a result of an incorrect application of the sentencing guidelines. This case differs from Trabelsi v. Belgium in a number of ways. First, the applicant is being prosecuted for drug-related crimes, while in Trabelsi v. Belgium the applicant was being extradited to the United States on terrorism-related charges, for which the US Sentencing Guidelines in Trabelsi v. Belgium called for a life sentence in respect of each of the first two offences. Secondly, unlike Trabelsi v. Belgium, in the present case three of the applicant's co-conspirators have been already sentenced in a related case before the same US judge who was assigned to the applicant's case. In particular, although those three co-conspirators faced a sentencing range of 188 to 235 months (the same as the applicant), 78 to 87 months and 70 to 97 months respectively, they were in fact sentenced to 72, 14 and 12 months of incarceration, i.e. lower than those set out in the guidelines referred to above. Section 3553(a)(6) of Title 18 of the US Code recognises the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. The applicant has not advanced any reasons as to

	why his situation is not comparable to that of the other co-conspirators. In sum, the applicant has not demonstrated that the maximum penalty would be imposed by a US court without due consideration of all the relevant mitigating and aggravating factors. There are many factors that contribute to the imposition of a sentence and that it is impossible to address every conceivable permutation that could occur or every possible scenario that might arise. However, it is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that if the measure complained of was to be implemented he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. The applicant has not produced any evidence capable of rebutting the Government's arguments as regards the speculative nature of his complaints and thus showing the existence of a real risk of his being subjected to treatment contrary to Article 3 of the Convention. *[paras. 112 through 118]* 2. At the time the domestic courts determined that there was no real risk of treatment proscribed by Article 3 in the country of destination, they were in possession of a limited number of documents by which to assess the applicant's situation. It was not until Rule 39 was applied by the Court that the Spanish authorities gathered additional information from the US Government, which explained in more detail the particularities of the applicant's situation and concluded that there was no risk of his being subjected to treatment contrary to Article 3 of the Convention. The Court recalls that the existence of a risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion. However, if an applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court. *[paras. 109 and 110]*
A. v. Switzerland No.: 60342/16 Type: Judgment Date: 19 December 2017 Articles: N: 2, 3 Keywords: – expulsion – ill-treatment Links: English only Translations: Romanian	*Circumstances:* Expulsion of a failed asylum seeker from Switzerland to Iran. *Relevant complaint:* The applicant alleged that it would be in breach of Articles 2 and 3 of the Convention to deport him to Iran owing to his conversion from Islam to Christianity in Switzerland. *Court's conclusions:* The general human rights situation in Iran does not, *per se*, prevent the deportation of any Iranian national. In the present case, the consequences of the applicant's *sur place* conversion were examined by the Swiss asylum authorities. The domestic authorities in the present case did not base their conclusions on a rejection of the applicant's conversion as not being credible. Christian converts would, in any event, only face a real risk of ill-treatment upon return to Iran if they manifested their faith in a manner that would lead to them being perceived as a threat to the Iranian authorities. That required a certain level of public exposure, which was not the case for the applicant, who was an ordinary member of a Christian circle. The Iranian authorities were aware that Iranian citizens at times attempted to rely

	on conversion to Christianity abroad in order to obtain refugee status and would take such circumstances into account, resulting in the person not facing a real risk of ill-treatment upon his or her return. The domestic authorities, who questioned the applicant in person, did not find him to be deeply committed to his faith and to consider that the public practice of it was essential for him to preserve his religious identity, and the applicant has not submitted any evidence or arguments to the Court which would call for a different assessment of the applicant's faith, notably as regards the public practice of his faith. *[paras. 40, 41, 43 and 44]*
M. A. v. France No.: 9373/15 Type: Judgment Date: 1 February 2018 Articles: Y: 3, 34 Keywords: – expulsion – ill-treatment – imterim measure Links: French only Translations: Romanian	*Circumstances:* Expulsion from France to Algeria. Interim measure not complied with (the Court published the interim measure on its secure website on 20 February 2010 at 16:02; the airplane on whose board the applicant was returned to Algeria closed its doors on 20 February 2010 at 16:15). *Relevant complaints:* 1. The applicant's deportation to Algeria exposed him to a serious risk of treatment contrary to Article 3 of the Convention, as evidenced by the fact that he was handed over as soon as he arrived to the Algerian intelligence services ("the DRS"), who detained him in an unknown location for a period of twelve days without any communication with the outside world or information from the judicial authorities and without notifying his family. The Algerian government was not unaware that he had been convicted in France for involvement in a criminal conspiracy to prepare acts of terrorism. The French Government also violated the confidentiality of his asylum application by communicating the information held by OFPRA to French police officers, thus increasing the risk that the Algerian authorities would be aware of his statements. The applicant also claims to be prosecuted in Algeria not only for acts for which he has already been convicted in France, but also for acts committed in Algeria described in his asylum application and for other reasons, which he describes as "perfectly fanciful". He claims that he will not receive a fair trial and that he faces death penalty for attempted murder with premeditation. 2. Even though the French Government was aware of the Court's interim measure, it did not contact the border police to delay the closing of the doors of the plane on which the applicant was taken. The French Government continued to be responsible for his fate when he was under its jurisdiction, even in a plane whose doors were closed. The French Government also engaged in various maneuvers to speed up his removal – OFPRA's decision of 17 February 2015 was not notified to him on the same day but only on 20 February 2015, this notification was not made by post, but directly in a police station, a circumstance that allowed an even faster execution of the decision, depriving him of any appeal

	before the administrative court or the CNDA. Finally, a consular laissez passer had been issued by the Algerian authorities the day before, on 19 February 2015. It follows that the French Government has taken all these measures in order to circumvent a possible interim measure taken by the Court. *Court's conclusions:* 1. Given the authority and reputation of the authors of the available reports on the human rights situation in Algeria, the multiplicity and concordance of the information reported by the various sources, the serious and recent nature of the investigations and the data on which they are based, the Court does not doubt about the reliability of the information thus collected. In addition, the Government has not produced any information or evidence capable of refuting the claims from these sources. The Court notes that in this case, the applicant's conviction for participation in an association of criminals for the preparation of acts of terrorism was the subject of a fully reasoned and detailed court decision, the text of which is public. The Court also notes that the applicant was indeed apprehended by the DRS upon his arrival in Algeria and imprisoned. While the Government submits that two other persons convicted in France for their participation in terrorist activities were returned to Algeria without having been exposed to any risk of violation of Article 3 of the Convention, the Court can not deduce from these allegations, which otherwise lack any details enabling the scope of the claim to be assessed, that the applicant would not, personally, be subject to a risk of suffering treatment prohibited by Article 3 of the Convention in case of his own return to Algeria. For all of these reasons, and in particular with regard to the profile of the applicant who is not only suspected of links to terrorism but has been the subject of a serious conviction in France of which the Algerian authorities are aware, the Court considers that at the time of his return to Algeria there was a real and serious risk that he would be exposed to treatment contrary to Article 3 of the Convention. *[paras. 54, 55, 57 and 58]* 2. The French authorities created conditions in which the applicant could only very difficultly apply to the Court for a second interim measure. In so doing, they deliberately and irreversibly undermined the level of protection of the rights set out in Article 3 of the Convention which the applicant sought to enforce by filing his application. In the circumstances of this case, the deportation rendered the application useless, since the complainant had been removed to a country which was not a party to the Convention. *[para. 70]*
Pirozzi v. Belgium No.: 21055/11 Type: Judgment	*Circumstances:* An Italian national arrested in Belgium on the basis of a European arrest warrant ("the EAW") issued for the purposes of his surrender to Italy in order to serve a sentence of imprisonment (and pay a fine) imposed in his absence in 1998. The applicant was located in Belgium in 2010 through

Date: 17 April 2018 Articles: N: 5§1, 6§1 Keywords: – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – in absentia – mutual assistance Links: French only Translations: not available	mutual assistance request (interception of telephone communication and localisation of mobile telephone numbers and observation). The applicant was surrendered to Italy on the basis of the EAW. *Relevant complaints:* 1. The documents relating to the means used by the Belgian police officers to locate and arrest the applicant were not included in the prosecution's file and that this made it impossible to check the legality and regularity of the operations prior to his arrest. Therefore, the applicant's arrest was not effected by legal means within the meaning of Article 5§1 of the Convention. 2. The Italian procedure in absentia constituted a ground for refusing extradition for several EU countries because the decision remained enforceable and no appeal was possible. According to the Court's case law, this was to be regarded as a "flagrant miscarriage of justice", which corresponds to the notion of procedure "manifestly contrary to the provisions of Article 6 or the principles enshrined therein". *Court's conclusions:* 1. It is true that the Belgian courts considered themselves to be in no position to examine, in the context of the execution of the EAW, the investigative duties carried out on the basis of a mutual assistance request with a view to locate the applicant and arrest him. However, the applicant's complaint is not supported by factual evidence of abusive conduct on the part of the police. If measures of observation have been taken, these measures are unrelated to the applicant's arrest. It follows that the lawfulness of the deprivation of the applicant's liberty did not depend, in the absence of any indication of arbitrariness, on the lawfulness of the prior operations with a view to locating and arresting the applicant. *[para. 49]* 2. In accordance with the system established by the Framework Decision on the EAW, it was for the judicial authority which issued the EAW and to which the applicant was to be surrendered to assess the legality and regularity of the EAW. As far as Belgium is concerned, the Belgian public prosecutor's office had no discretion as to the appropriateness of the arrest, and the competent Belgian courts could only refuse enforcement on the grounds laid down by the Belgian law on the EAW. The Court considers that the review carried out by the Belgian authorities, which is thus limited, does not pose any problem in itself with the Convention since the Belgian courts have examined the applicant's claims under the Convention. They thus verified whether the execution of the EAW did not give rise, in the applicant's case, to a manifest lack of protection of the rights guaranteed by the Convention. As the Chamber of Indictments of the Brussels Court of Appeal found in its judgment of 9 September 2010, the applicant had been officially informed of the date and place

	of the trial in the Brescia Court of Appeal. He had also been assisted before the Court of Appeal and defended by a lawyer whom he had appointed himself and who had also defended him at the first instance and whose defense was proved to be effective since it led to a reduction of sentence. Those factors are sufficient for the Court to find that, in the present case, the execution of the EAW by the Belgian courts was not tainted by a manifest insufficiency capable of reversing the presumption of equivalent protection provided under the EAW systemn. For the same reasons, the Court concludes that the surrender of the applicant to the Italian authorities can not be regarded as being based on a trial constituting a flagrant denial of justice. *[paras. 66, 67, 70 and 71]*
Paci v. Belgium No.: 45597/09 Type: Judgment Date: 17 April 2018 Articles: N: 5§1, 6§1 Keywords: – extradition (temporary surrender) Links: French only Translations: not available	*Circumstances:* An Italian national surrendered from Italy to Belgium in 2007 on the basis of a European arrest warrant ("the EAW") under the condition that he would be returned to Italy to serve a sentence of imprisonment imposed on him by Belgian authorities. The applicant was convicted and sentenced in Belgium in 2008 and returned to Italy in 2010 to serve the remainder of the sentence of imprisonment there. *Relevant complaint:* The applicant complained that it took nearly two years after his conviction by the Belgian court to be returned to Italy. *Court's conclusions:* The Court notes that the proceedings against the applicant in Belgium ended with the judgment of the Court of Cassation of 25 February 2009 dismissing the applicant's appeal. It points out that neither the applicant nor the Italian authorities have taken any steps with a view to his return. The Belgian authorities initiated these steps in the months following the judgment of the Court of Cassation. They subsequently sent several reminders to their Italian counterparts. As the outcome of the surrender procedure does not depend solely on the Belgian authorities, no violation can, in these specific circumstances, be found in the time elapsed after the judgment of the Court of Cassation. *[para. 77]* *NOTE: Temporary surrender as such was not used in the case. However, the Court's conclusions may be of relevance in temporary surrender context as well.*
Batyrkhairov v. Turkey No.: 69929/12 Type: Judgment Date: 5 June 2018 Articles: Y: 3, 5§1, 5§4, 5§5 Keywords: – expulsion – ill-treatment	*Circumstances:* Expulsion of a Kazakhstani national, a failed asylum seeker, whose extradition from Turkey to Kazakhstan had been rejected because the charge against him in Kazakhstan fell within the scope of one of the offence categories, precluding extradition, listed in Article 18 § 1 (b) of Turkish Criminal Code, from Turkey to Kazakhstan. *Relevant complaint:* The applicant complained under Articles 3 and 13 of the Convention that he had been unlawfully deported to Kazakhstan despite the decision rejecting his extradition and without any assessment of his claim that he ran the risk of being subjected to torture and other ill-treatment if returned to his country, even though such a risk existed at the relevant time.

– relation between extradition and deportation or expulsion Links: English only Translations: Croatian, Turkish	*Court's conclusions:* The applicant consistently claimed before the domestic authorities that he would be exposed to a real risk of death or ill treatment if removed to Kazakhstan. He provided the domestic authorities with information about his personal situation and the reasons for his fear of ill-treatment and death. Besides, the document containing the Kazakhstan authorities' extradition request demonstrated that the applicant was of interest to the Kazakhstan authorities as a suspected terrorist, although he never admitted to any affiliation with any terrorist organisation. As can be seen from the information and material publicly available to the administrative authorities at the relevant time, various parties had independently made allegations of ill-treatment by the law-enforcement officials in Kazakhstan; the instances of ill-treatment had not occurred in "isolated or infrequent instances"; and law-enforcement officials "targeted members of Islamic groups in their efforts to combat terrorism" in that country. The domestic authorities were aware or ought to have been aware of facts indicating that the applicant could be exposed to a risk of ill-treatment upon his returning to Kazakhstan. Therefore, they were under an obligation to address the applicant's arguments and to carefully assess the risk of ill-treatment if the applicant were to be removed to Kazakhstan, in order to dispel any doubts about possible ill treatment. The applicant was deported to Kazakhstan by the police despite the existence of a judicial decision – that is to say the Bakırköy Assize Court's judgment refusing the Kazakhstan authorities' extradition request on the grounds that the applicant had been charged in that country with one of the offences, precluding extradition, listed in Article 18 § 1 (b) of the Criminal Code (that is to say, a speech offence, a political offence or a military offence). The Court considers that as such, the applicant's removal to Kazakhstan constituted circumvention of the domestic extradition procedure. In the absence of an examination by the national authorities of the applicant's claim that he would face a real risk of treatment contrary to Article 3 if removed to Kazakhstan and of a legal procedure providing safeguards against unlawful deportation, the applicant's deportation to Kazakhstan amounted to a violation of Article 3 of the Convention. *[paras. 47, 51 and 52]*
X v. the Netherlands No.: 14319/17 Type: Judgment Date: 10 July 2018 Articles: N: 3 Keywords: – expulsion – ill-treatment	*Circumstances:* Expulsion of a failed asylum seeker, who was convicted and sentenced in the Netherlands for several preparatory acts of terrorism (with certain evidence obtained from the Moroccan authorities through mutual legal assistance in criminal matters), from the Netherlands to Morocco. The applicant was also convicted and sentenced of a (different) terrorist criminal offence in Morocco. *Relevant complaint:* The applicant would face a real risk of being subjected to treatment contrary to Article 3 of the Convention if he were expelled to Morocco, given that the Moroccan authorities must be considered to be aware of his conviction for terrorism-related crimes in the Netherlands, his

– mutual assistance Links: English only Translations: not available	association with a dismantled Moroccan militant cell loyal to the Islamic State and his asylum application in the Netherlands. On this point, he referred, inter alia, to the requests for mutual legal assistance. *Court's conclusions:* The issue before the Court is not whether upon his return the applicant risks being monitored, arrested and/or questioned, or even convicted of crimes, by the Moroccan authorities since this would not, in itself, be contrary to the Convention. The issue is whether the applicant's removal to Morocco would expose him to a real risk of being tortured or subjected to inhuman or degrading treatment or punishment as prohibited by Article 3 of the Convention. The Court notes that no request for the applicant's extradition to Morocco has been made. It further notes thatthe applicant has been convicted of terrorism-related offences and it must be assumed that the Moroccan authorities are aware of the nature of his conviction in the Netherlands. Moreover, the Dutch authorities conducted an investigation into whether the applicant was being searched for in respect of any criminal offences in Morocco. As regards the alleged risk of the applicant being prosecuted in Morocco as a terrorist suspect because of his conviction in the Netherlands, the Court finds, on the basis of the material before it, that it has not been established that the Moroccan judicial authorities fail to respect the principle of ne bis in idem. Accordingly, it finds that it has not been demonstrated that the applicant would risk prosecution in Morocco in respect of the same facts held against him in the criminal proceedings in the Netherlands, as contended by the applicant. As regards the alleged risk of the applicant being prosecuted for terrorist offences due to his link with the dismantled terrorist cell in Morocco, the Court has found no indication in the material before it that the Moroccan authorities – who must be assumed are aware of the applicant's existence, identity and country of residence – have ever taken any steps demonstrating an interest in the applicant. This is not altered by the fact that the applicant's name was mentioned in the Moroccan judgment convicting nine members of the dismantled terrorist cell, which must be seen in the context of the facts held against B.B. Accordingly, it finds that it has not been demonstrated that there are grounds to assume that the Moroccan authorities regard the applicant a suspect of terrorism. *[paras. 76, 79 through 81]*
B.U. and Others v. Russia Nos.: 59609/17, 74677/17 & 76379/17 Type: Judgment Date: 22 January 2019 Articles: Y: 3, 5§1, 5§4 Keywords:	*Circumstances:* The applicants are nationals of Tajikistan and Uzbekistan. On various dates, the applicants were charged in their countries of origin with religious and politically motivated crimes, their pre-trial detention was ordered *in absentia*, and international search warrants were issued by the authorities. Subsequently, the Russian authorities took final decisions to remove (that is to say extradite or expel) the applicants. *Relevant complaints:*

– assurances – custody (length) – expulsion – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: Ukrainian	1. The applicants complained under Article 3 of the Convention that the national authorities had failed to consider their claims that they could be at risk of ill-treatment in the event of their removal to their respective countries of origin and that their removal would expose them to that risk if it were to take place. 2. Two of the applicants complained that their detention pending administrative expulsion had been unreasonably long and had been ordered without any indication of time-limits or prospects of release. *Court's conclusions:* 1. The Court has previously established that individuals whose extradition was sought by either Uzbek or Tajik authorities on charges of religiously or politically motivated crimes constituted a vulnerable group facing a real risk of treatment contrary to Article 3 of the Convention in the event of their removal to their respective countries of origin (see, for example, *Mamazhonov v. Russia*). It is apparent that in the course of the extradition and expulsion proceedings the applicants consistently and specifically argued that they were being prosecuted for religious extremism and faced a risk of ill-treatment. The material relating to the charges made by the Tajik and Uzbek authorities was clear as to its basis, namely that the applicants were accused of religiously and politically motivated crimes. The Tajik and Uzbek authorities thus directly identified the applicants with groups whose members have previously been found to be at real risk of being subjected to treatment proscribed by the Convention. In such circumstances, the Court considers that the Russian authorities had at their disposal sufficiently substantiated complaints pointing to a real risk of ill-treatment. In the extradition and expulsion proceedings, the domestic authorities did not carry out a rigorous scrutiny of the applicants' claims that they faced a risk of ill-treatment in their home country. The Court reaches this conclusion having considered the national courts' simplistic rejections of the applicants' claims. Moreover, the domestic courts' reliance on the assurances of the Tajik and Uzbek authorities, despite their formulation in standard terms, appears tenuous, given that similar assurances have consistently been considered unsatisfactory by the Court in the past (see, for example, *Abdulkhakov v. Russia* and *Tadzhibayev v. Russia*). The Court also notes that the Russian legal system, in principle, offers several avenues whereby the removal of applicants to their countries of origin could be prevented, given the risk of ill-treatment they face there. However, the facts of the present cases demonstrate that the applicants' claims were not adequately considered in any relevant proceedings, despite being consistently raised. Nothing in the parties' submissions, nor any previously examined relevant material from independent international sources provides a basis for concluding that the criminal

	justice system of Tajikistan or Uzbekistan, or the specific treatment of those prosecuted for religiously and politically motivated crimes, has improved. *[paras. 17 through 19, 22, 23 and 26]* 2. Prior to their detention pending expulsion, the applicants had been detained pending extradition for approximately one year. On the day of their release from detention pending extradition, they were immediately re-arrested for violation of migration rules. They were found guilty by the district courts, which ordered their administrative removal and placed them in detention pending expulsion without indicating any time-limits. Those judgments were subsequently upheld in full by the Moscow City Court after the Court had indicated the interim measures. The domestic judicial decisions ordering the applicants' detention pending expulsion contained no analysis of the particularities of the cases as regards the need for detention, and no estimation of how realistic the applicants' removal was in the light of the Rule 39 measure. Nor did those decisions set any time-limits for review of the continued validity of the applicants' detention. In the absence of scrutiny by the domestic courts of those decisive elements, it has not been demonstrated that the length of the applicants' detention pending expulsion was compliant with what was reasonably required for the purpose pursued. *[paras. 34 and 35]*
Said Abdul Salam Mubarak v. Denmark No.: 74411/16 Type: Decision Date: 22 January 2019 Articles: N: 3, 8, 10 Keywords: – assurances – expulsion – family life (separation of family) – ill-treatment – nationality Links: English only Translations: not available	*Circumstances:* Expulsion of a national of Morocco from Denmark to Morocco following his conviction in Denmark for serious criminal offences (terrorism-related) and withdrawal of his Danish citizenship (he had gained Danish nationality in 1988, having entered Denmark in 1984 when he was 24 years old). Prior to his explusion, the applicant's extradition had been unsuccessfully requested by Morocco twice (also for terrorism-related offences). In the course of the proceedings leading to his expulsion, the applicant filed for asylum in Denmark; his application was denied. The applicant's wife (a Danish national of Moroccan descent) and daughter born in 2015, as well as his four adult children from previous reltionships lived in Denmark. *Relevant complaints:* 1. The applicant's expulsion to Morocco would be in breach of Article 3 of the Convention, because twice the Moroccan authorities had requested his extradition relating to crimes he had not committed. He also submitted that he risked double punishment in respect of the crimes of which he was convicted in Denmark 2. The order to withdraw the applicant's Danish citizenship and to expel him from Denmark was in violation of Article 8 of the Convention. *Court's conclusions:*

	1. The issue before the Court is not whether, upon his return, the applicant risks being monitored, arrested and/or questioned or even convicted of crimes by the Moroccan authorities since this would not, in itself, be contrary to the Convention. The issue is whether the applicant's removal to Morocco would expose him to a real risk of being tortured or subjected to inhuman or degrading treatment or punishment as prohibited by Article 3 of the Convention. The human rights situation in general has improved in Morocco over several years and the authorities are making efforts to comply with international human rights standards. However, it also transpires from the reports that, despite the efforts undertaken by the Moroccan Government, ill-treatment and torture by the police and the security forces still occur, particularly in the case of persons suspected of terrorism or of endangering State security. Nevertheless, in the Court's opinion, a general and systematic practice of torture and ill-treatment during questioning and detention has not been established. The applicant has failed to substantiate being in danger due to his alleged criticism against the King and regime in Morocco. The extradition request was based on a suspicion that the applicant had committed serious crimes, which included attempted murder and attempt to sabotage installations using explosives, committed in Casablanca in 2003. The Danish Government had taken special measures both in the period between 2006 and 2008, and anew in 2015, to ensure that the applicant, if extradited, would not be subjected to treatment contrary to the Convention. Moreover, there is a real way of controlling compliance with those assurances. Therefore, even though the applicant has not been extradited, but expelled, the Court has not found any reason to question the validity of the assurances provided, nor has it found any indication that the Moroccan authorities would fail to honour their assurances. *[paras. 49, 50, 54 through 56]* 2. The applicant had the possibility to contest the prosecuting authorities' request to strip him of his Danish citizenship before the domestic courts at three levels of jurisdiction, and he has not alleged any procedural shortcomings in this respect. The decision to deprive the applicant of his Danish citizenship became final on 8 June 2016, when the Supreme Court upheld the High Court's judgment. The decision was taken subsequent and due to the fact that the applicant, in February 2014, had again been charged with promoting terrorism, committed as from the beginning of 2012 until the date of arrest. Hence, the authorities did act diligently and swiftly. Finally, the Court points out that the situation complained of came about as a result of the applicant's continued criminal behaviour, in that he was convicted of very serious terrorist crimes under 114e of the Penal Code, and had been convicted for similar crimes in 2007. Thus, any

	consequences complained of are to a large extent a result of his own choices and actions. The applicant was not rendered stateless by the decision to deprive him of his Danish citizenship. The domestic courts carefully assessed the consequences for the applicant of a revocation of his Danish citizenship. They took into account the fact that he had been born and raised in Morocco, where he spent all of his school years and that he came to Denmark when he was 24. He had lived in Denmark for 32 years. Furthermore, he spoke Arabic and some Danish. He had not achieved a permanent attachment to the Danish labour market and had received social benefits since 1994. He had four adult children. In 2013, under Islamic law, he had married a Danish citizen of Moroccan descent and, in October 2015, she gave birth to a daughter who, according to him, was his child. Having weighed the severity of the offence against the impact of withdrawal of the applicant's citizenship, based on an assessment of his situation, including his ties with Denmark and Morocco, his current family situation and his language skills, the courts found that it would not be in breach of Article 8 of the Convention to revoke the applicant's Danish citizenship. In respect of the applicant's right to family life, the Court reiterates that there will be no family life between parents and adult children or between adult siblings unless they can demonstrate additional elements of dependence. Moreover, although he had married a Danish national of Moroccan origin under Islamic law in 2013, before the charges were brought against the applicant in February 2014, the applicant did not divorce his second wife under Danish law until 2015. Moreover, he and his third wife never lived together. Their daughter was conceived, when the applicant was detained, and she was born in October 2015, after the City Court's judgment of 4 December 2014, and the High Court's judgment of 1 July 2015. The applicant and his new wife therefore knew that their family life in Denmark would from the outset be precarious, and they could not legitimately expect the applicant's deportation order to be revoked on the basis of a fait accompli due to their having a child together. Nevertheless, even assuming that the applicant can rely on this relationship in the context of the present case, the Court notes that the applicant's wife is of Moroccan origin, and that she has not before the Danish authorities submitted any reason why she and the daughter could not follow the applicant to Morocco. *[paras. 65 through 67, 69, 70, 75 and 76]*
U.A. v. Russia No.: 12018/16 Type: Judgment Date: 22 January 2019 Articles: Y: 3, 5§1	*See the summary of the similar case of B.U. and Others v. Russia.*

Keywords: – custody (length) – expulsion – ill-treatment Links: English only Translations: Ukrainian	
Güzelyurtlu and Others v. Cyprus and Turkey No. 36925/07 Type: Judgment [GC] Date: 29 January 2019 Articles: Y: 2 (Turkey); N: 2 (Cyprus) Keywords: – extradition (procedure) – mutual assistance – right to life (procedural aspect) – transfer of proceedings Links: English, French Translations: Romanian, Ukrainian Chamber Judgment: English, French (Translations: Croatian, Romanian, Turkish)	*Circumstances:* The application concerned the effectiveness of the investigation into the murder, committed in 2005, of Elmas, Zerrin and Eylül Güzelyurtlu, all Cypriot nationals of Turkish Cypriot origin who lived in the Cypriot Government-controlled area. The victims were found also in the Cypriot Government-controlled area. Paralel investigations were conducted by the Cypriot authorities and the Turkish, including the "TRNC", authorities. The Cypriot authorities' investigation identified several suspects and issued warrants for their arrest; Interpol also issued Red Notices in respect of the suspects. In 2008, Cyprus requested (through its Embassy in Athens, which delivered the request to the Turkish Embassy in Athens) extradition of the remaining suspects (in the meantime, one of the suspects had been cleared and another one murdered) from Turkey under the European Convention on Extradition. Several days later, however, the extradition request was returned back to the Cypriot authorities without a formal reply. Cooperation attemptes made through the United Nations Peacekeeping Force in Cyprus ("UNFICYP") between 2005 and 2015 were unsuccessful, as on one hand, the Cypriot authorities refused to provide evidence to the "TRNC" while on the other hand, the "TRNC" authorities maintained that they could not surrender Turkish Cypriots. *Relevant complaint:* The applicants complained that there had been a violation of Article 2 of the Convention by both the Cypriot and Turkish (including the "TRNC") authorities on account of their failure to conduct an effective investigation into the deaths of their relatives. They pointed to the failure of the respondent States to cooperate in investigating the murders and bringing the suspects to justice. *Court's conclusions:* Supplying the whole investigation file to the "TRNC" with the possibility that the evidence would be used for the purposes of trying the suspects there, and without any guarantee that they would be surrendered to the Cypriot authorities, would go beyond mere cooperation between police or prosecuting authorities. It would amount in substance to a transfer of the criminal case by Cyprus to the "TRNC" courts, and Cyprus would thereby be waiving its criminal jurisdiction over a murder committed in its controlled area in favour of the courts of an unrecognised entity set up within its territory. Indeed, the exercise of criminal jurisdiction is one of the main features of the sovereignty of a State. The Court therefore agrees with the Cypriot Government that in such a specific situation it was

	not unreasonable to refuse to waive its criminal jurisdiction in favour of the "TRNC" courts. This position is also consistent with the tenor of the relevant Council of Europe instruments to which both States (Cyprus and Turkey) were parties. Article 2(b) of the Mutual Assistance Convention gives the requested State the possibility of refusing assistance if it considers that the execution of the request is likely to prejudice the sovereignty, security, ordre public, or other essential interests of the country. Likewise, the Transfer of Proceedings Convention does not impose an obligation on a State to waive jurisdiction and transfer the proceedings to another State. Nor does it establish a system of priorities of jurisdiction in the event of positive conflicts of jurisdiction between two States that would impose, for instance, a duty to transfer the case to the State where the suspects are located. In the light of the foregoing, neither Cyprus's refusal to submit all the evidence to the authorities of the "TRNC" or Turkey, nor its failure to transfer the proceedings to the authorities of the "TRNC" or Turkey, amounted to a breach of its duty to cooperate in the context of the procedural limb of Article 2 of the Convention. In the context of the mediation efforts carried out by UNFICYP, the following forms of cooperation were suggested in order to find a compromise solution between Cyprus and the "TRNC" authorities: meetings in the UN buffer zone between the police of both sides and the police of the British Sovereign Bases, the questioning of the suspects at the Ledra Palace Hotel in the UN buffer zone through "the video recording interview method", the possibility of an ad hoc arrangement or trial at a neutral venue, the transfer of the suspects to a third State, and dealing with the issue on a technical services level. However, the Court does not see how these other forms of cooperation could, in themselves, have facilitated the prosecution and trial of the suspects. It has not been established before the Court that these alternatives, in particular the possibility of arranging an ad hoc trial at a neutral venue, would have had a sufficiently solid basis in domestic or international law. In these circumstances, the Court does not consider that Cyprus was required under Article 2 of the Convention to engage in these forms of cooperation. Given the absence of diplomatic relations between Cyprus and Turkey, the delivery of the requests through the staff of their respective embassies in Athens can be accepted in the specific circumstances of the case as the only channel available to Cyprus. The Court cannot accept that the lack of diplomatic relations would release the respondent States from the obligation to cooperate imposed by Article 2 of the Convention. In so far as the silence of Turkey on the extradition requests could be understood as a refusal to extradite, the Court considers that the Turkish authorities would have been expected to indicate why they considered that the extradition was not acceptable under their legislation or under the Extradition Convention. In this respect, the Court notes that Article 18(1) and (2) of the Extradition Convention imposes an obligation on the requested State to inform the requesting State of its decision with regard to the

	extradition and in case of rejection to give reasons for such a decision. Article 13 of that Convention also establishes that if the information communicated by the requesting State is found to be insufficient to allow the requested State to make a decision on the extradition, the latter must request the necessary supplementary information. The Court is of the opinion that the obligation to cooperate under Article 2 of the Convention should be read in the light of these provisions and should, therefore, entail for a State an obligation to examine and provide a reasoned reply to any extradition request from another Contracting State regarding suspects wanted for murder or unlawful killings who are known to be present in its territory or within its jurisdiction. This consideration suffices for the Court to conclude that Turkey did not make the minimum effort required in the circumstances of the case and therefore did not comply with its obligation to cooperate with Cyprus for the purposes of an effective investigation into the murder of the applicants' relatives. This finding makes it unnecessary for the Court to determine whether Turkey was required in the particular circumstances of the case to extradite some or all of the suspects requested by Cyprus. The Court concludes that Turkey breached its duty to cooperate in the context of the procedural limb of Article 2, for the failure to provide a reasoned reply to the extradition requests by Cyprus. *[paras. 244, 253 through 256 and 263 through 266]*
M.I. v. Bosnia and Herzegovina No.: 47679/17 Type: Decision Date: 29 January 2019 Articles: N: 2, 3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Bosnian	*Circumstances:* Extradition of a Russian national, a failed asylum seeker, from Bosnia and Herzegovina to Russia for the purposes of prosecution for organising or participating in an illegal armed organisation. Office of the Prosecutor General of the Russian Federation (OPGRF) provided the following assurances: the applicant would enjoy all the fair trial guarantees which existed in international law; would only be tried for the crimes for which he had been extradited by Bosnia and Herzegovina; would not be subjected to torture or inhuman or degrading treatment or punishment; would be free to leave the Russian Federation upon the completion of the criminal proceedings and after serving any sentence; would not be extradited to a third country; and would have conditions of detention which were in accordance with the Convention. Moreover, it was guaranteed that officials from the embassy of Bosnia and Herzegovina could visit the applicant at any time for the purpose of verifying compliance with the pledges made. *Relevant complaints:* 1. The applicant, if extradited to Russia, would be detained, tortured or killed owing to the nature of the charges against him and the previous ill-treatment of him and members of his family (Article 3 of the Convention). 2. The applicant also invoked Article 2 of the Convention, in view of the "indications and attempts to reintroduce the death penalty, particularly in the context of persons ultimately being charged with terrorism".

	Court's conclusions: 1. The applicant's claim is based partly on the general situation in the requesting State and partly on his specific circumstances. The Court has already found that although there were reports of serious human rights violations in the North Caucasus region, the situation was not such that any return to the Russian Federation would constitute a violation of Article 3 of the Convention. Certain categories of the population of the North Caucasus, and more particularly of Chechnya, Ingushetia and Dagestan, are particularly at risk, such as members of the armed insurgency, persons considered by the authorities to be such members, their relatives, or persons who have assisted them in one way or another. In this context, the risk assessment for an applicant must be made on an individual basis, but bearing in mind that persons with a profile corresponding to one of the above categories are more likely than others to attract the unfavorable attention of the authorities. There is no question in this case of "simply" expelling the applicant to Dagestan. If he is removed to the Russian Federation, it will be in response to a request for extradition. If he is returned to the Russian authorities, he may be detained pending trial and prosecuted and, if convicted and sentenced, he is likely to serve his sentence in a State-run penal facility for convicted prisoners. While the applicant's account of the events giving rise to his departure from the Russian Federation appears credible as a whole, it remains vague and incomplete, particularly in relation to the nature of the alleged ill-treatment perpetrated against him and members of his family. Moreover, the applicant has not submitted any evidence, documents or medical reports to substantiate his claims regarding the alleged ill-treatment. With respect to the alleged risk of the applicant's being ill-treated in the event of his extradition, the Court notes that, as experience shows, the physical abuse of suspects by police officers usually occurs within the first few days of an arrest, which is a different type of situation from that now potentially faced by the applicant. In any event, a mere possibility of ill-treatment in circumstances similar to those obtaining in the present case is not in itself sufficient to give rise to a breach of Article 3 of the Convention. In addition, both the general situation in the requesting State and the applicant's individual situation in the present case are to be seen in the light of the assurances provided by the OPGRF regarding his treatment in the event of his extradition. The assurances under assessment in the present case are similar in nature to those accepted by the Court in other cases relating to extradition to a requesting State. The validity of these guarantees has not been undermined by the applicant, and there are no grounds to doubt that the assurances given by the OPGRF will be respected. It is true that it remains within the discretionary power of authorities of Bosnia and Herzegovina to avail themselves, or not, of the opportunity to carry out the diplomatic monitoring of

	compliance with the assurances given by the Russian authorities. Nevertheless, by offering and confirming that opportunity, the Russian authorities undoubtedly gave additional weight to the provided guarantees. The Court attaches importance to the fact that the case concerns extradition to a High Contracting Party to the Convention which has undertaken to secure the fundamental rights guaranteed under this provision, and that claims concerning specific forthcoming violations of guarantees of the Convention could be addressed in a complaint against it. *[paras. 45, 46, 48 through 51, 53 and 54]* 2. In 2009 the Constitutional Court of the Russian Federation imposed an indefinite moratorium on capital punishment in Russia, and the applicant's contentions to the contrary remain unsubstantiated. *[para. 57]*
B.A.A. v. Romania No.: 70621/16 Type: Decision Date: 26 March 2019 Articles: N: 5§1(c), 5§3, 6§1, 6§2, 18 Keywords: – custody (lawfulness) – extradition (custody) – extradition (procedure) – fair trial Links: English only Translations: not available	*Circumstances:* Surrender of a German national from the United Kingdom to Romania on the basis of a European arrest warrant ("the EAW") for the purposes of prosecution. *Relevant complaints:* 1. The applicant complained about the "discretionary" manner in which the Romanian authorities had ordered his arrest. He argued that the authorities had not had sufficient evidence to suspect him of the commission of the crimes of which he had been accused. Moreover, he contended that there had been no real need to arrest him two years after the start of the criminal investigation. He averred that given the volume of documents presented in the case file, it would have been impossible for the judges to thoroughly examine the prosecutor's request in such a short time. Lastly the applicant argued that the domestic courts had not examined the possibility of taking a less strict preventive measure. 2. Under Article 6 §§ 1 and 2 of the Convention, the applicant complained about the manner in which the prosecutor's request for the taking of the preventive measure had been examined by the courts, arguing that he had not been properly notified of the proceedings or given sufficient time to properly examine the case given the complexity of the file, and that the reasoning of the decision indicated that the courts had started from the premise that he was guilty. *Court's conclusions:* 1. The suspicion about the applicant's criminal activity was based on an extensive body of evidence gathered by the prosecutor and presented to the court. That evidence was sufficient to satisfy an objective observer that the applicant may have committed the offences of bribery and embezzlement. Nothing in that material appears to cast doubt on the reasonableness of that suspicion. There is, moreover, nothing to suggest that the arrest warrant was issued for any other purpose than to bring

	the applicant before a competent Romanian court. The fact that that had not yet happened and that there had been delays in issuing the arrest warrant was mainly due to the applicant not having been present in Romania, a situation which could not be imputed to the Romanian authorities. The Court has no reason to depart from the domestic court's conclusion, based on the established circumstances of the case, that another, more lenient, measure would not have been effective. *[paras. 21, 22 and 25]* 2. The domestic authorities took reasonable steps to inform the applicant of the proceedings against him and to verify that he was absconding. The applicant was given a possibility to appear and defend himself in person or, as he chose to do, through hired counsel. Nothing in the case-file shows that the latter's ability to represent his client and to put forward arguments in his favour before the Romanian authorities was limited or restricted. *[para. 26]*
G.S. v. Bulgaria No.: 36538/17 Type: Judgment Date: 4 April 2019 Articles: Y: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Bulgarian, Czech, Ukrainian	*Circumstances:* Extradition (on the basis of *de facto* reciprocity) of a Georgian national from Bulgaria to Iran for the purposes of prosecution for an offence punishable by imprisonment and by corporal punishment (flogging). The possibility of corporal punishment was not mentioned in the Iranian request for the applicant's extradition. *Relevant complaint:* The decision to extradite the applicant to Iran would, if implemented, put him in danger of treatment contrary to Article 3 of the Convention as the Bulgarian authorities had not subjected the request of the Iranian authorities – in particular the part concerning the punishment likely to be imposed on him under Article 656 of the Iranian Penal Code – to proper scrutiny, even though the duty to assess the risk of ill-treatment in the event of extradition stemmed from Bulgaria's own law. Such scrutiny had been particularly necessary because it was well known that people accused and convicted of offences in Iran were often subjected to torture and inhuman and degrading punishments, which were lawful in that country. No other European State was extraditing people to Iran. In the applicant's view, the risk of his suffering ill-treatment was real. He referred in this connection to reports by Amnesty International and Human Rights Watch. *Court's conclusions:* It is scarcely in doubt that the punishment alleged to await the applicant in Iran – up to seventy-four lashes – is contrary to Article 3 of the Convention. It should be accepted that such a punishment amounts to torture. It should be noted that before a red notice can be published by Interpol, the relevant National Central Bureau must provide information about the penal laws relating to the offence (even their actual wording, when possible) and the maximum penalty possible. The text of the provision under which the applicant is being prosecuted in Iran – Article 656 § 4 of the Iranian Penal Code – was reproduced in the red notice issued by the National Central Bureau of Interpol for Iran and

	then in the Iranian extradition request, but that text was incomplete and did not refer to flogging as a form of punishment. The Bulgarian authorities did not check this, apparently taking their Iranian counterparts at their word. Having examined the various international reports that flogging sentences are commonplace in Iran, and the, albeit unofficial, information that at least until 2013 such sentences had been imposed and carried out in a number of cases concerning various forms of theft and related offences, the real risk of being given such a sentence and of having it carried out is sufficiently established. Nothing suggests that it has subsided owing to more recent developments in Iran. That risk cannot be sufficiently dispelled by the possibility that the applicant might be acquitted. Nor is there anything to imply that, in the event of conviction, flogging would be outside the normal range of sentencing options available to the Iranian courts in the specific circumstances of his case, that as an alien he would be treated more leniently, or that, once imposed, such a sentence would not be carried out. The Government, which were in the circumstances best placed to obtain information on these matters from the Iranian authorities, have not put before the Court any material showing how the criminal proceedings against the applicant would be likely to unfold – for instance information about the course of the proceedings against his alleged accomplice –, or material indicating what factors would guide the Iranian courts' choice of sentence in the event of conviction. Iranian authorities included in their extradition request an assurance, couched in general stereotyped terms, that the applicant would not be subjected to torture or inhuman treatment. This assurance cannot be regarded as sufficient, for at least two reasons. First, the extradition request omitted to specify that Article 656 § 4 of the Iranian Penal Code envisaged not only imprisonment but also flogging as a type of punishment. This raises profound misgivings about the Iranian authorities' trustworthiness in this matter. Secondly, it appears that those authorities do not regard flogging and other forms of corporal punishment as inhuman or degrading. Indeed, they recently publicly stated that they considered flogging as a legitimate form of punishment which has been "interpreted wrongfully, by the West, as ... degrading". The exact tenor of their assurance in that respect is thus quite uncertain. Another factor raising doubts in relation to that risk is that Iran apparently regards flogging and other forms of corporal punishment as relating to an important aspect of its sovereignty and legal tradition. Indeed, it is one of the few States which have not even signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; it has consistently declined to do so. It has also expressly refused to follow recommendations to remove corporal punishments from its Penal Code. This shows that the Iranian authorities are still fully intent on resorting to such punishments, even in the face of strong international pressure. There is, moreover, nothing to suggest that compliance with any assurances in that respect could be effectively verified. There is no evidence that the Bulgarian

	diplomatic services have already cooperated with the Iranian authorities in relation to such matters. More importantly, assurances against torture by a State in which it is endemic or persistent should as a rule be approached with caution. It follows that the decision to extradite the applicant to Iran would, if implemented, give rise to a breach of Article 3 of the Convention owing to the possible punishment that awaits him there. *[paras.* 81, 84, 87, 88, 90 and 92 through 94*]* *[NOTE: The complaint and the Court's conclusions regarding the alleged unfairness of the extradition proceedings are similar to a number of the Court's previous decisions already summarized above (e. g. Mamatkulov and Askarov v. Turkey and Trabelsi v. Belgium) and, therefore, have not been included in this summary.]*
O.O. v. Russia No.: 36321/16 Type: Judgment Date: 21 May 2019 Articles: Y: 3, 34 Keywords: – expulsion – ill-treatment – interim measure Links: English only Translations: Ukrainian	*Circumstances:* Deportation of an Uzbek national (who had unsuccessfully applied for refugee status) from Russia to Uzbekistan (where he was indicted for religious and politically motivated crimes) following his release from prison in Russia (convicted of participating in an extremist organisation, forging official documents, and attempting an illegal crossing of the State border). Interim measure not complied with. *Relevant complaint:* The Russian authorities had failed to consider his claims that he would face a real risk of being subjected to ill-treatment in the event of his deportation to Uzbekistan. *Court's conclusions:* In the course of the asylum and deportation proceedings, the applicant consistently and specifically argued that he had been prosecuted for religious extremism and would face a real risk of ill-treatment if returned to Uzbekistan. Documents from the Uzbek authorities, i.e. the bill of indictment and the detention order, were clear as to their basis – the applicant was accused of religiously and politically motivated crimes, namely for the participation in an extremist religious organisation Islamic Movement of Turkistan. Thus, they directly identified the applicant as being part of a group whose members had previously been found to be at real risk of being subjected to proscribed treatment. In such circumstances, the Russian authorities had at their disposal a sufficiently substantiated complaint pointing to a real risk of ill-treatment. The domestic authorities did not carry out a rigorous scrutiny of the applicant's claim. The Court reaches this conclusion having considered the national authorities' cursory rejections of the applicant's claim. The Russian authorities failed to assess the applicant's claim adequately through reliance on sufficient relevant material. That failure cleared the way for the applicant's deportation to his country of origin. The Court previously had consistently concluded that the removal of an applicant charged with religiously and politically motivated crimes in Uzbekistan exposes that applicant to a real risk of ill-treatment in the country of origin. While the Court notes with attention the cautious indications of improvement included in the independent reports, nothing in the

	parties' submissions in the present case provides at this moment a sufficient basis for a conclusion that persons prosecuted for religiously and politically motivated crimes no longer run such a risk. By enforcing the deportation order the Russian authorities thus exposed the applicant to a real risk of being subjected to treatment contrary to Article 3 of the Convention. *[paras. 43. 44, 47, 48, 51 and 52]*
S.S. and B.Z. v. Russia Nos.: 35332/17 & 79223/17 Type: Judgment Date: 11 June 2019 Articles: Y: 3, 5§4, 34 Keywords: – custody (length) – expulsion – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: Ukrainian	*Circumstances:* Extradition of a Tajik national (a failed asylum seeker) from Russia to Tajikistan. Interim measure not complied with. *Relevant complaint:* The applicant's extradition was in breach of the interim measures indicated by the Court under Rule 39 of the Rules of Court. *Court's conclusions:* The applicant's extradition occurred on 26 May 2017, i.e. more than twenty-four hours after the indication on 24 May 2017 of an interim measure under Rule 39 of the Rules of Court staying the removal for the duration of the proceedings before the Court. Following the Court's indication of the measure, the Office of the Representative of the Russian Federation to the European Court of Human Rights was duly notified of it and relayed that information to the competent authorities through the usual channels of communication. No uncertainty exists regarding the manner of the applicant's transfer to Tajikistan, since it occurred in the course of routine actions aimed at enforcing the applicant's extradition. In this regard, the present case is distinctly different from a number of previously decided cases where a failure to comply with an interim measure took place in the context of an applicant's disappearance, or an action otherwise outside of the normal functioning of the law-enforcement authorities. It is clear from the available material that the Representative of the Russian Federation to the European Court of Human Rights was duly notified of the interim measure at least twenty-four hours before the applicant's extradition. The twenty-four-hour period by itself and also when considered in the context of available modern technologies, appears to be amply sufficient for all competent and relevant authorities to have been notified that the applicant's removal to Tajikistan had been stayed by the Court. *[paras. 46, 47 and 49]* *[NOTE: The complaint and the Court's conclusions regarding the risk of ill-treatment and the applicants' custody are similar to the Court's previous decision in B.U. and Others v. Russia already summarized above and, therefore, have not been included in this summary.]*
Ozdil and Others v. the Republic of Moldova No.: 42305/18 Type: Judgment Date: 11 June 2019	*Circumstances:* Expulsion of five Turkish nationals from Moldova to Turkey. The applicants, who were teachers in a private chain of schools in Moldova. In connection with the attempted military coup in Turkey in 2016, the Turkish ambassador to Moldova accused this chain of schools of ties to the movement allegedly responsible for the attempted coup and accused the teachers in those schools of terrorism. In May 2017, the Turkish Prime Minister visited Moldova and requested from his Moldovan

Articles: Y: 5§1, 8 Keywords: – expulsion – custody (lawfulness) – relation between extradition and deportation or expulsion Links: English only Translations: Romanian, Turkish, Ukrainian	counterpart the shutdown of these schools. On 6 April 2018, all the applicants applied to the Moldovan Bureau for Migration and Asylum for asylum. They sought to obtain refugee status in Moldova because they feared reprisals in their country of origin, Turkey, on the grounds of their political views. On 6 September 2018 in the morning, the applicants were arrested in their homes or on their way to work by individuals wearing plain clothes and taken to an unknown destination. Later in the day, the Moldovan secret service issued several statements concerning a large anti-terrorist operation which had taken place that day, during which seven foreign nationals suspected of ties to an Islamist organisation had been arrested and removed from Moldova in cooperation with secret services from other countries. On the same day, the Turkish media reported that the Turkish secret service had conducted a successful operation in Moldova, during which seven members of the Fethullah Gülen movement had been arrested. The fate of the applicants, and even whether they were still in Moldova, remained unknown to their families for several weeks. The Moldovan authorities refrained from communicating any information about them either to their families or to the press. It appeared later that on the very morning of their arrest the applicants were taken directly to Chişinău Airport, where an aeroplane chartered for that purpose was waiting for them and took them immediately to Turkey. *Relevant complaint:* The applicants argued that their detention on the morning of 6 September 2018 and their handing over to the Turkish authorities had been unlawful under domestic law. *Court's conclusions:* The applicants were transferred from Moldova to Turkey by members of the secret services of Moldova and Turkey. It has not been demonstrated by the Government that the applicants had, at that point, been notified of any decisions in their cases, either as to their application for asylum in accordance with the Status of Aliens Act or of a decision on their extradition under the Code of Criminal Procedure. The Moldovan authorities not only failed to give the applicants a choice of jurisdiction to be expelled to, but deliberately transferred them directly to the Turkish authorities. The joint operation of the Moldovan and Turkish secret services was prepared well in advance of 6 September 2018. The fact that the applicants were transported to Turkey in a specially chartered aeroplane for that purpose is only one of the elements that support that point of view. The facts of the case also indicate that the operation was conceived and organised in such a manner as to take the applicants by surprise so that they would have no time and possibility to defend themselves. Viewing the circumstances of the case as a whole and having regard to the volume of evidence pointing in the same direction and to the speed with which the Moldovan authorities acted, the Court concludes that the applicants' deprivation of liberty on 6 September 2018 was neither lawful nor necessary within the meaning of Article 5§1(f) of the Convention, nor devoid of arbitrariness. Depriving the applicants of their liberty in this way

	amounted to an extra-legal transfer of persons from the territory of the respondent State to Turkey which circumvented all guarantees offered to them by domestic and international law. *[paras. 39, 54, 55 and 57]*
S.S. and Others v. Russia Nos.: 2236/16, 64042/17, 81344/17 & 4067/18 Type: Judgment Date: 25 June 2019 Articles: Y: 3, 5 Keywords: – custody (length) – expulsion – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: Ukrainian	*See the summary of the similar case of B.U. and Others v. Russia.*
Kislov v. Russia No. 3598/10 Type: Judgment Date: 9 July 2019 Articles: Y: 5§1, 5§4, 5§5; inadmissible: 3, 6, 13 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (documents in support of) – extradition (grounds for refusal) – fair trial	*Circumstances:* Extradition of a Belarussian national from Russia to Belarus, where the applicant had been convicted (after trial partly in his presence and partly in absentia) of taking a bribe and forgery of an official document. *Relevant complaints:* 1. In the event of his extradition, the applicant would run a risk of ill-treatment for two reasons. First, the human-rights situation in Belarus in 2016 when he had submitted his observations to the Court was unsatisfactory and continued to worsen. Secondly, following his complaints about unlawful actions and corruption within the district Potrebsoyuz, criminal charges had been "fabricated" against him. Various procedural violations had occurred during the investigation and the trial in March 2005. In his observations submitted in 2016, he also mentioned that the Belarusian authorities would "retaliate" for his complaints to the OSCE, the Court and the United Nations. The respondent Government had not refuted any of his above arguments relating to the risk of ill-treatment, but had confined their reasoning to the assurances given by the Belarusian Prosecutor General's Office. The applicant insisted, however, that the extradition request of 29 July 2009 contained no assurances

– ill-treatment – in absentia Links: English only Translations: Ukrainian	relating to (and even less dispelling any doubt about) the risk of ill-treatment in the event of his extradition. No such assurances had been sought by the Russian authorities and none had been given. 2. The charges against him had been "fabricated" and he had not received a fair trial in Belarus. The trial judge had not afforded him an opportunity to examine three key prosecution witnesses or to have two witnesses on his own behalf heard. In addition, the judge had dismissed his requests for expert reports to be ordered. The trial judge had placed the prosecution in a privileged position, for instance, by allowing them to make an oral pleading twice during the trial. The trial record did not include the content of questions raised by the parties before witnesses, thereby depriving the applicant of any meaningful right to appeal by way of a cassation or supervisory review, which would be based on the case file, including the trial transcript. Belarusian judges lacked independence, in particular because they were appointed and removed from office by the President of Belarus. As regards specifically the trial judge in his case, he had refused to delve into the factual and legal details of the case, stating that "the prosecutor had studied it for a year"; he had not heard any oral submissions from the applicant at the trial, and the applicant had not made any statement during the investigation either. Subsequently, the judge in question had been included in the European Union's sanction list in relation to cases arising from public demonstrations in 2010. The above considerations had prompted him to abstain from further participating in the trial. Thereafter, he had left Belarus. The applicant's lawyer had not received the trial judgment until 2009 and had been unable to lodge an appeal against it because the statutory time limit had elapsed. The supervisory-review procedure could not be considered an effective remedy because it did not allow the court to reassess the facts. In any event, he had used that remedy. Therefore, any assurances relating to that procedure were devoid of merit. Thus, as of 2016, the applicant had no longer had an effective remedy available to him in Belarus to challenge his conviction, in respect of either the factual or the legal findings made in the judgment of 5 December 2005. *Court's conclusions:* 1. Although international reports supported concerns as to the human-rights situation in Belarus, those concerns were primarily related to political opposition activities and the exercise of political freedoms; the applicant in the present case has not claimed that his fears of ill-treatment are based on his political views. A recent UN report on Belarus refers to the use by law-enforcement officers of torture and ill-treatment in order to extract confessions from suspects, and states that such confessions are used as evidence in court; however, those findings are not directly relevant to the

	applicant, who would serve a final sentence of imprisonment following his conviction in 2005. As a rule, reference to a general problem concerning human-rights observance in a particular country cannot alone serve as a basis for refusal of extradition. It has not been substantiated that the human-rights situation in Belarus is such as to call for a total ban on extradition to that country, for instance on account of a risk that detainees will be ill-treated. The material before the Court does not conclusively indicate that every detainee held in a Belarusian post conviction detention facility (namely, the strict-regime prison as indicated in the applicant's 2005 trial judgment) ran in 2009-10, or currently runs, a real risk of physical ill-treatment. Thus, the general situation in Belarus in 2009-10 was not, and is not presently, of such a nature as to show, on its own, that there would be a breach of Article 3 of the Convention if the applicant were extradited there. The applicant has not specified what the "fabricated" charges actually consisted of; for instance, there is no indication that he was entrapped or incited to commit a criminal offence or convicted on the basis of planted evidence. However, the applicant may be understood as claiming that he had not committed the offences (that is, he had not received a bribe or forged a document); in this connection, it suffices for the Court to note, in so far as the assessment of the extradition request is concerned, that the material before the Russian authorities and before the Court disclosed that there was sufficient basis for a reasonable suspicion against the applicant in relation to the allegation that he had taken a bribe and forged a document, on account of, inter alia, the incriminating statement from the person who had given the bribe. There is enough material to confirm that this suspicion was supported by an array of documentary evidence and witness statements. The applicant's related reference to his "political" persecution may be understood as retaliation for whistleblowing; however, there is not sufficient material to confirm that the applicant's criminal prosecution in Belarus was an act of retaliation or intimidation for any act of whistleblowing carried out in good faith and on reasonable grounds. Indications of the applicant's involvement in a criminal offence committed in October-December 2003 and a reasonable suspicion against him resulting, in August 2004, in the institution of criminal proceedings against him had both arisen prior to his complaints in July 2004 alleging misappropriation of funds within the district Potrebsoyuz; those complaints were lodged against the background of his dismissal from that body in June 2004 and the ongoing conflict and litigation relating to his employment there. The applicant is wanted by the Belarusian authorities for the purpose of executing a sentence for ordinary criminal offences, which did not appear to be related to any particular political context. The material before the Court does not disclose that the context of the impugned offences (bribery within an organisation related to the State) was such as to give rise,

	per se, to substantial grounds for believing that the applicant runs a real risk of ill-treatment. Furthermore, the applicant has not submitted sufficient detail or evidence to support his allegation that, while working for the propaganda unit of an organisation, he had run "opposition meetings" of the staff. The substance and extent of his alleged divergence or dissent from the "official" propaganda remain unclear. It is also noted that he was not subjected to detention pending the investigation or the trial in Belarus, and sustained no "inhuman treatment" within the meaning of Article 3 of the Convention at the hands of agents of the State during that period of time. Despite the applicant's allegation, the Court is not satisfied that the trial judge's attitude or comments at the trial amounted to an example of mistreatment of such gravity. The Court is thus not convinced that the applicant was in 2010, and remains now, over thirteen years after the trial in Belarus, at a real risk of ill-treatment. As to the applicant's references to various procedural violations during his trial in Belarus, this type of allegation raised by a fugitive convicted in a requesting country may raise issues under Article 5 of the Convention in so far as he or she is exposed to a risk of serving a prison term after a flagrant denial of justice or, as in the present case, under Article 6 of the Convention. The Court does not discern any causal link between the alleged procedural irregularities and a risk of physical ill-treatment because of them in the event of the applicant's extradition in order to serve the prison term. In any event, the complaint of "inhuman punishment" fails in so far as the applicant's complaint of procedural irregularities is dismissed as unfounded. The applicant has not put forward any arguments to show that in the individual circumstances of his case, he is at risk of punishment that would go beyond the inevitable suffering inherent in deprivation of liberty. While the extradition request contained no assurances relating to a risk of treatment in breach of Article 3 of the Convention, in view of the foregoing findings that the applicant's substantive allegations are unfounded, the absence of relevant assurances does not change the outcome of the complaint under Article 3 of the Convention. *[paras. 87 through 90, 93 through 98 and 100]* 2. During one part of the trial, the applicant exercised his right under Belarusian law to be present at his trial in that country and to defend himself. As to his subsequent absence from the remainder of the trial, there is nothing to suggest that he then fled Belarus on account of any treatment in breach of Article 3 of the Convention, substantial grounds relating to a real risk of such ill-treatment or any valid concern of political persecution there. The applicant has failed to substantiate that the Convention would require the criminal proceedings in Belarus to be taken up again in the context of the present case, where the applicant had left the country before the proceedings ended and may be returned there to serve his sentence. Furthermore, the applicant has submitted no explanation to the

	Court as to why his privately retained counsel in Belarus no longer represented him after his departure for Russia; what prevented his counsel from exercising other procedural rights on the applicant's behalf and in his interests, despite his absence; or why the applicant did not seek restoration of the time limit for a review in the cassation appeal proceedings. It appears that he could have made such an application by post, as he did as regards a supervisory review in his case. The applicant's conviction despite his absence did not amount to a "flagrant denial of justice" in breach of Article 6 of the Convention. Nor would the unavailability of a retrial amount to such a denial of justice, be it in relation to such absence from the trial, or because of the other procedural irregularities. As regards an opportunity to examine prosecution witnesses Ms S. and Mr Ye., the applicant provided no details in relation to them: for instance, the reasons for their absence from the trial; whether any requests or measures relating to ensuring their presence had been made and taken (prior to the applicant's departure for Russia or thereafter); or the defence's position at the trial as regards the admission of their pre-trial statements. Moreover, having examined the trial judgment, the Court is not satisfied that their untested pre-trial testimony laid a foundation for either charge. Overall, the Court is not satisfied that the reliance on their pre-trial testimony in the trial judgment was indicative of a "flagrant denial of justice". The trial judgment does not rely on any adverse testimony from witness Sh., and thus the complaint in this part is clearly unfounded. In so far as the applicant referred to the trial court's refusal to hear witnesses on behalf of the defence, there is no evidence that he made any such request or that the trial judge refused it. For instance, the applicant has not submitted a copy of the trial transcript, to which he repeatedly referred in his observations before the Court, as regards various requests or motions lodged before the trial court in 2005. Even accepting the relevance of that testimony to the subject matter of the accusation, its ability to influence the outcome of the proceedings – or, at least, to strengthen the position of the defence – remains unsubstantiated. The fact that judges were not elected does not, as such, appear to offend against Article 6 of the Convention. The applicant did not develop and substantiate his assertion relating to the dismissal of judges by the President of Belarus and the alleged adverse effect on the requirement of their impartiality and independence. For its part, the Court notes with concern the UN findings on that matter, but finds them insufficient to reach a conclusion relating to a "flagrant denial of justice" in respect of the proceedings against the applicant. As regards the impartiality of the trial judge, the applicant's allegation was twofold: that the judge had refused to hear him and that this person was then sanctioned by the European Union. The witness statements submitted by the applicant to the Court indicate that the trial judge admitted the applicant's written statement to the

	file. Therefore, even accepting as established the fact that the trial judge refused to hear oral representations from the applicant, this shortcoming was counterbalanced, to a certain extent, by the admission of the written submissions. Thus, the omission did not entail a "flagrant denial of justice" within the stringent test of unfairness applicable in the extradition context. Moreover, it does not appear that the applicant articulated and substantiated his allegations under this heading before the appeal court in his extradition case, in particular with reference to the witness statements, which he submitted only to this Court. Similarly, the fact that many years later the judge was sanctioned by the European Union on account of unrelated proceedings in which he had issued judgments is not, by itself, sufficient either, in particular given the Court's findings relating to the overall fairness of the proceedings conducted by that judge at the applicant's trial. The Court has not been given sufficient reason to doubt that the actions imputed to the applicant, and for which he had been convicted, constituted criminal offences under the Belarusian Criminal Code. In so far as the applicant's remaining submissions before the Court were related to the finding of guilt by the Belarusian court, it is not for this Court to determine, under Article 6 of the Convention, whether the Belarusian court convincingly established the applicant's guilt on the strength of the evidence examined by it. In so far as the observance of Article 6 of the Convention by a Contracting State is concerned, it is not the function of this Court to deal with errors of fact or of law allegedly committed by a domestic court of the Contracting State unless and in so far as they may have infringed rights and freedoms protected by the Convention. In the determination of whether the proceedings were fair, this Court does not act as a court of fourth instance deciding on whether the evidence had been obtained unlawfully in terms of domestic law, its admissibility or on the guilt of an applicant. It is not appropriate for this Court to rule on whether the available evidence was sufficient for an applicant's conviction and thus to substitute its own assessment of the facts and the evidence for that of the domestic courts. The Court's only concern is to examine whether the proceedings have been conducted fairly. The above considerations apply, a fortiori, in the extradition context as to the Court's role and the role of the domestic courts reviewing the extradition order. While the Court accepts that the proceedings in Belarus were not without reproach, it has not been convincingly shown that they constituted a "flagrant denial of justice". *[paras. 118, 119, 123, 124 and 126 through 129]* *[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. Zokhidov v. Russia,*

	Shcherbina v. Russia and Kholmurodov v. Russia) and, therefore, have not been included in this summary.]
Romeo Castaño v. Belgium No.: 8351/17 Type: Judgment Date: 9 July 2019 Articles: Y: 2 Keywords: – assurances – extradition (procedure) – right to life (procedural aspect) Links: French only Translations: Romanian, Spanish, Ukrainian	*Circumstances:* The applicants are the children of Lieutenant-Colonel Ramón Romeo who was murdered in Spain by a commando who claimed membership in the terrorist organization ETA on 19 January 1981. An alleged member of the commando, N.J.E., a Spanish national of Basque origin, was suspected of having fired point-blank at the applicants' father. In May 2007, all members of the commando were sentenced by the Spanish courts, except N.J.E., who fled from Spain to Mexico following the events of 1981 before settling in Belgium. A Spanish investigating judge of the Audiencia Nacional issued two European arrest warrants ("EAWs") on 9 July 2004 and 1 December 2005 against N.J.E. for the purposes of criminal prosecution for attempted murder and terrorism committed and participation in a criminal organization, terrorism, intentional homicide, serious bodily injury, and murder committed in Spain in 1981. In 2013, Belgian court declared the EAWs enforceable. N.J.E. appealed this order arguing that the execution of the EAWs should be refused as the prosecution was statute-barred under Belgian law and that the facts were within the extraterritorial jurisdiction of the Belgian courts. In addition, she argued that there were serious grounds for believing that the execution of the EAWs would have the effect of undermining her fundamental rights under Article 6 of the Treaty on the European Union ("TEU"). On 31 October 2013, Belgian court of appeal refused the execution of the EAWs on the basis of Article 4(5) of the EAW Act, referring to the the broader context of Spain's contemporary political history and the personal context of N.J.E. who, while active in her twenties in the "armed Basque resistance movement", had become a 55-year-old professionally active woman with a normal life in Belgium. In addition, relying in particular on a report by the European Committee for the Prevention of Torture on the periodic visit to Spain from 31 May to 13 June 2011, the court of appeals found that there were serious grounds for believing that the enforcement of the EAW would undermine N.J.E.'s fundamental rights guaranteed by Article 6 of the TEU. The decision of the court of appeal was confirmed by the cassation court. In 2015, a new EAW was issued in respect of N.J.E. by an investigating judge of the Audiencia Nacional for the acts committed in Spain in 1981. Execution of this EAW was refused by Belgian courts as well. *Relevant complaint:* The refusal of the Belgium to execute the EAWs issued by the Spanish authorities in respect of the alleged murderer of their father is unjustified and unreasonable and, therefore, breached Article 2 of the Convention in its procedural aspect. Although the Belgian courts have been able to establish the existence of a risk of infringement of the fundamental rights of N.J.E., they should not have refused to surrender it on that ground alone. In fact, the Belgian courts were required to identify the

	alleged risk in question by examining the concrete and specific impact surrender could have on N.J.E. To do this, they should have asked the Spanish authorities for more information about the conditions of detention to which N.J.E. would have to be submitted, if any. This would have allowed Spain, as the issuing State of the EAW, to provide assurances that N.J.E. would not be subjected to inhuman or degrading treatment. *Court's conclusions:* The Belgian authorities provided a reasoned reply to their Spanish counterparts. Refusal to surrender under EAW must be justified by detailed evidence indicating a manifest danger to the fundamental rights of the person concerned. The approach followed by the Belgian courts corresponds to the principles the Court has set out in its case-law according to which, in the context of the execution of an EAW by an EU Member State, the mutual recognition mechanism of the EU should not be applied. automatically and mechanically, to the detriment of fundamental rights. From the point of view of the Convention, a risk of inhuman and degrading treatment of the person whose surrender is requested, because of the conditions of detention in Spain, may constitute a legitimate ground to refuse the execution of the EAW, and therefore to refuse cooperation with Spain. However, the circumstances of the case and the interests in question should have led to the Belgian authorities to request further information on the application of the detention regime in the case of N.J.E., in particular with regard to the location and conditions of detention, in order to verify the existence of a concrete and real risk of violation of the Convention in the event of surrender. The examination carried out by the Belgian courts during the surrender proceedings was not sufficiently complete to consider the reason invoked by them to refuse the surrender of N.J.E. to the detriment of the applicants' rights to sufficient investigation. The Court emphasizes that this finding of a violation of Article 2 of the Convention does not necessarily imply that Belgium has an obligation to surrender N.J.E. to the Spanish authorities. It is the insufficiency of the factual basis of the ground for refusing surrender which led the Court to find a violation of Article 2. This does not detract from the obligation of the Belgian authorities to ensure that in case of handing over to the Spanish authorities, N.J.E. will not run the risk of being treated contrary to Article 3 of the Convention. More generally, this judgment can not be interpreted as reducing the obligation of States not to extradite a person to a country requesting extradition where there are substantial grounds for believing that the person concerned, if extradited to that country there will be a real risk of being subjected to treatment contrary to Article 3 and, therefore, to ensure that such a risk does not exist. *[paras. 83 through 85, 89, 90, 92]*

Kalinichenko v. Russia No.: 40834/11 Type: Judgment Date: 9 July 2019 Articles: Y: 5§1, 5§3, 5§4, 6§2; N: 5§1 Keywords: – custody (lawfulness) – extradition (custody) Links: French only Translations: not available	*Circumstances:* The case concerns (inter alia) the lawfulness of the applicant's custody in Russia immediately following his extradition from Morocco to Russia in 2011. The Russian authorities relied on the decision on his custody issued in 2007. *Relevant complaint:* The length of the applicant's detention exceeded the maximum allowed for pre-trial detention during the preliminary investigation under Article 109§2 of the CCP. He disputed the Government's argument that the six-month period provided for in Article 109§11 of the CCP began on the date of his delivery to the Russian authorities and maintains that this period should have been calculated from the day of the expiration of the twelve-month period provided for in Article 109§2 of the CCP. Consequently, the applicant considered that he could not have been detained after 16 July 2011. *Court's conclusions:* The domestic authorities considered that the applicant's detention following being handed over to the Russian authorities was authorized by the decision of the Verkh-Issetski district court of 27 February 2007. However, on the date of the applicant's surrender to the Russian authorities, that is to say on 14 May 2011, the applicant had already spent sixteen months and twenty-eight days in extradition detention in Italy and in Morocco, and, in accordance with Article 109§10 paragraph 4 of the CCP, this period had to be taken into account for the calculation of the overall duration of detention permitted on the basis of Article 109§2 of the CCP. On 14 May 2011, the date of the applicant's imprisonment, the maximum period of his detention within the meaning of Article 109§2 of the CCP, that is to say twelve months, had been exceeded, and the only possible legal basis for its extension was paragraph 11 of this Article. The Verkh-Issetski district court decision of 27 February 2007 was adopted long before the applicant was placed in extradition detention abroad, and, therefore, it did not and could not logically contain any reference to Article 109§11 of the CCP. Therefore, the Verkh-Issetski district court decision of 27 February 2007 could not constitute a legal basis for the applicant's pre-trial detention after his surrender to the Russian authorities on 14 May 2011. It appears that, at the time of the arrest and of the applicant's imprisonment in the Russian territory, there was no court decision which would have authorized, in accordance with Article 109§11 of the CCP, the applicant's pre-trial detention beyond the maximum duration of twelve month provided for in Article 109§2 of the CCP. It was only on 12 July 2011 that the applicant's pre-trial detention was extended for the first time on the basis of Article 109§11 of the CCP. However, the domestic judge did not indicate in this decision the date from which the six-month period for which the applicant's pre-trial detention could be extended on the basis of this provision began. In any event, even supposing that the judge understood that this period had started on 14 May 2011, any decision authorizing ex post facto the continued detention of a person is not permitted by

	Russian domestic law and it is also incompatible with "the right to security" within the meaning of Article 5 of the Convention. *[paras. 75 through 77]*
R.K. v. Russia No.: 30261/17 Type: Judgment Date: 8 October 2019 Articles: Y: 5§1(f), 5§4; N: 3 Keywords: – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion of a failed asylum seeker from Russia to the Democratic Republic of Congo (the DRC). *Relevant complaint:* In the applicant't request for temporary asylum, he had indicated the exact date and location of the opposition protest in which he had taken part as a result of which his name had been put on the international wanted persons list. To substantiate his claim, the applicant adduced a copy of an order of arrest, dated 23 January 2015. During the hearing before the Chertanovskiy District Court of Moscow on 6 March 2017, the applicant had claimed that, if he were to be returned to the DRC, he would be subjected to political persecution and ill-treatment there. The applicant claimed that neither the migration authorities nor the domestic courts had thoroughly assessed his fear of persecution and ill-treatment in the DRC. *Court's conclusions:* It appears from various international reports that following the election in December 2018 of the new president in the DRC, the security situation in the western regions of DRC, including Kinshasa, remained relatively stable. The security situation in the north-eastern or eastern provinces of the country remained however particularly difficult. The applicant lived in Kinshasa before he left his country of origin and there is no reason to assume that he would be expelled to the eastern provinces of the DRC. The applicant has not argued that the general situation in the DRC is such as to entail that any removal to it of a Congolese national will necessarily be in breach of Article 3 of the Convention, nor can such a conclusion be drawn from the case material before the Court. As regards the existence of a real and personal risk by virtue of the applicant's past activities in the DRC, the the domestic administrative and judicial authorities, having assessed the applicant's claim, found that the applicant did not adduce evidence capable of demonstrating that there are substantial grounds for believing that, upon return to DRC, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. The Court sees no grounds to depart from this conclusion. In particular, it remains unexplained how the applicant could freely leave the country by plane on a valid visa while he allegedly was on an international wanted persons list and why he, although having arrived on 20 October 2015 in Russia and his visa having expired on 29 November 2015, waited until 10 March 2016 to lodge an application for temporary asylum. The applicant submitted to the Court an uncertified copy of an order issued on 23 January 2015 to corroborate his allegations. In this regard, and bearing in mind the above standard of proof, the Court notes that the content of the case-file reveals that the applicant did not submit this document to the domestic authorities during his asylum procedure. He

	also did not explain to the Court whether, and if so why, it would have been burdensome for him to obtain the original or a certified copy of the document issued on 23 January 2015, taking into account the fact that he had left the DRC months later, in October 2015. The Court moreover notes that the applicant did not reply to the Government's submission that, according to information provided by the Russia's National Central Bureau of the Interpol, the applicant is not being searched for. The Court has found no concrete information in the contents of the applicant's case file indicating a negative interest of the authorities of the DRC in the applicant, either at the material time or currently. Nothing indicates that these authorities have ever taken actual steps aimed at finding out the applicant's whereabouts after he had left the DRC on a valid student visa. There is no evidence that the applicant was involved in any DRC political opposition activities or group abroad and for this reason would have to fear ill-treatment upon his return to the DRC. *[paras. 49 through 55]*
R.R. and A.R. v. Russia Nos.: 67485/17 & 24014/18 Type: Judgment Date: 8 October 2019 Articles: Y: 3 Keywords: – expulsion – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*See the summary of the similar case of B.U. and Others v. Russia.*
S.B. and S.Z. v. Russia Nos.: 65122/17 & 13280/18 Type: Judgment Date: 8 October 2019 Articles: Y: 3 Keywords: – expulsion – extradition (grounds for refusal) – ill-treatment Links: English only	*See the summary of the similar case of B.U. and Others v. Russia.*

Translations: not available	
N.M. v. Russia No.: 29343/18 Type: Judgment Date: 3 December 2019 Articles: Y: 3 Keywords: – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*See the summary of the similar case of B.U. and Others v. Russia.*
M.A. and Others v. Bulgaria No.: 5115/18 Type: Judgment Date: 20 February 2020 Articles: Y: 2, 3 Keywords: – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* The case concerns the intended expulsion on national security grounds (terrorist connections) of five Uighur failed asylum seekers to China, where they would allegedly be at risk of death or ill treatment. *Relevant complaint:* If returned to China, the applicants would face persecution, ill-treatment and arbitrary detention and could even be executed. *Court's conclusions:* The relevant information on the current situation in the Xinjiang Uighur Autonomous Region (XUAR) shows that the Chinese authorities have proceeded with the detention of hundreds of thousands or even millions of Uighurs in "re education camps", where instances of ill-treatment and torture of the detainees have been reported. According to the United States Department of State, some detainees have even been killed by security officials. The sources cited above indicate that the governmental repression against Uighurs is being justified with the need to combat terrorism and extremism, and that suspicions of separatism or endangering State security can lead to long prison terms or the death penalty without due process. In view of the above, in light of the information about the general situation in the XUAR and the applicants' individual circumstances (namely their being suspected of terrorism and having fled China), the Court finds substantial grounds for believing that the applicants would be at real risk of arbitrary detention and imprisonment, as well as ill-treatment and even death, if they were removed to their country of origin. *[paras. 73, 74 and 77]*
Baz v. Ukraine No.: 40962/13 Type: Judgment Date: 5 November 2020	*Circumstances:* Extradition of an asylum/subsidiary protection seeker from Ukraine to Turkey for the purposes of prosecution. *Relevant complaints:*

Articles: Y: 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) Links: English only Translations: Ukrainian	1. The applicant's detention was contrary to Article 5§1(f) of the Convention because his appeals against the revocation of his refugee status had still been pending, meaning that he could not be extradited and he also applied for subsidiary protection and so could not be extradited while those proceedings had been pending. 2. The applicant's detention was contrary to Article 5§1(f) of the Convention since his prosecution in Turkey had become time-barred. *Court's conclusions:* 1. The applicant did not point to any provision of domestic law which would support his submissions that he had retained his refugee status in Ukraine while his appeals against the decision to revoke that status had been pending. Likewise, no provision of domestic law prevented his extradition detention while his application for subsidiary protection was pending. While those two sets of proceedings may well have constituted a bar to his actual extradition to Turkey while they were pending, there was no bar to extradition once they were concluded in a manner unfavourable to the applicant. Therefore, the mere fact that those proceedings were pending does not put in doubt the compliance of the applicant's detention with the requirements of domestic law and with Article 5§1 of the Convention. *[para. 36]* 2. From 15 August 2013 (when the applicant's prosecution in Turkey became time-barred) the applicant's extradition became definitively impossible under the European Convention on Extradition, which is binding on Ukraine. Despite that fact, the applicant was not released until 30 August 2013. The Court has already found violations of Article 5§1 of the Convention in similar circumstances. It sees no reason to find otherwise in the present case. *[para. 37]*
Shiksaitov v. Slovakia Nos.: 56751/16 & 33762/17 Type: Judgment Date: 10 December 2020 Articles: Y: 5§1, 5§5 Keywords: – asylum – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	*Circumstances:* The case mainly concerns the alleged unlawfulness of the applicant's provisional arrest in Slovakia in 2015 and his subsequent detention with a view to his extradition to Russia, even though he had previously been granted refugee status in Sweden. The applicant was a Russian national of Chechen origin living in Sweden. The applicant's extradition was sought by Russia on account of his criminal prosecution for acts of terrorism that he had allegedly committed in 2004 in Grozny as a member of an armed group and in respect of which, if convicted, he faced a sentence of life in prison. The extradition request was denied by Slovakia in 2016 and the applicant was released. *Relevant complaint:* The applicant complained with regard to his being placed in preliminary detention that Russia had not lodged any request for him to be placed in preliminary detention, as required by Article 16 of the European Convention on Extradition. As regards both his preliminary detention and detention pending extradition, the applicant argued that they had been contrary to both Article 501(b) of

	the CCP and Article 5§1(f) of the Convention on account of the fact that, as a holder of refugee status in Sweden, he could not be extradited to Russia and there had thus been no reason to secure his presence in Slovakia. He also pointed out that in view of the fact that Directives 2011/95/EU and 2013/32/EU had unified EU asylum policy, it was immaterial whether asylum had been granted to him in Slovakia or in another member State of the EU. Consequently, the Slovak authorities had been bound by the decision of Sweden to grant him asylum. *Court's conclusions:* Article 16 of the European Convention on Extradition establishes that the provisional arrest of a person whose extradition is sought must be decided on by the requested Party in accordance with its own law. Thus, this international instrument requires in the first place compliance with the domestic procedure. In this regard the Court takes cognisance of the interpretation of the applicable rules, as determined by the Slovak Constitutional Court, whereby it unequivocally stated that the only condition for the applicant's placement in preliminary detention was that a request be lodged by the prosecutor, pursuant to Article 504§3 of the CCP; the Constitutional Court furthermore held that Article 16§1 of the European Convention on Extradition could not be interpreted to mean that such a request had to be lodged by the State requesting extradition. As to the applicant's argument that his detention served no purpose as he could not have been extradited owing to the refugee status granted to him in Sweden, the Court notes that it has consistently held that the detention of a person for the purpose of extradition is rendered unlawful and arbitrary by the existence of circumstances that under domestic law exclude the extradition of that person. However, in contrast to the previous cases, it cannot be asserted in the instant case that the applicant's extradition was completely banned, given that the decision of the Swedish authorities to grant him asylum did not automatically exclude the possibility that the applicant might be extradited by the Slovak authorities. Article 501(b) of the Slovak CCP prohibits the extradition of a person who has applied for refugee status in Slovakia or who has been granted such status. In the instant case, however, the applicant had been granted refugee status in Sweden – not in Slovakia. Such a decision is extraterritorially binding in that an award of refugee status by Sweden, as one of the State Parties to the 1951 Geneva Convention, could be called into question by Slovakia only in exceptional circumstances giving rise to the appearance that the beneficiary of the decision in question manifestly falls within the terms of the exclusion provision of Article 1F of the 1951 Geneva Convention and therefore does not meet the requirements of the definition of a refugee contained therein. Thus there might be situations where information which came to light in the course of extradition proceedings concerning a recognised refugee may warrant a review of his or her status. Consequently, the fact that the applicant had been granted refugee status in Sweden did not automatically mean that he should be

	considered as a refugee in Slovakia. Alerted to the applicant's special status and bound by their obligation to respect the principle of *non-refoulement*, the Slovak authorities decided, in the course of standard extradition proceedings, to conduct their own inquiry into the danger of the applicant being persecuted in Russia and to contact the Swedish authorities in order to obtain the full facts of his case. In this context, the Court reiterates that when an extradition request concerns a person facing criminal charges in the requesting State, the requested State is required to act with greater diligence than when an extradition is sought for the purposes of enforcing a sentence, in order to secure the protection of the rights of the person concerned. It was legitimate for the Slovak courts to examine whether an exclusion provision might be applicable in respect of the applicant – all the more so given that it had been established that the Swedish authorities had not checked the Interpol database during the asylum proceedings in respect of the applicant and had not examined the nature of the criminal charge brought against him in Russia. In so doing, the Slovak authorities had to consider all the circumstances of the applicant's individual case. Given that the requesting State was the country in which the applicant had been persecuted (presumably because of his and his brother's political activities), any evidence presented by it had to be treated with great caution when establishing whether or not the extradition request was based on fabricated charges or whether the crime giving rise to that request could be categorised as "non-political" within the meaning of Article 1F of the 1951 Geneva Convention and Article 12§2(b) of Directive 2011/95/EU. Furthermore, since the Slovak authorities initially concluded that the act amounted to a "non-political" offence, they were obliged to examine whether the extradition might be precluded for other reasons, such as non-compliance with formal requirements under extradition law or, as in the instant case, insufficient evidence in support of the allegations made against the applicant. In view of the above, the Slovak authorities cannot be blamed for having carried out a preliminary investigation with a view to determining whether there were any legal or factual impediments to the applicant's extradition and for having examined the extradition request, despite the applicant having been previously granted refugee status in Sweden. Such an examination has to be regarded as being intrinsic to actions "taken with a view to extradition". In this respect, according to the relevant domestic decisions, the applicant's detention was justified (under Articles 505§3 and 506§1 of the CCP) by the necessity to secure his presence on Slovak territory (and thus to prevent any obstruction of the completion of the preliminary investigation and of the fulfilment of the purpose of the extradition proceedings). The Court does not ignore that the applicant's extradition to Russia was eventually declared inadmissible, mainly under Article 501(b) of the CCP – that is to say because (i) he enjoyed the protection as a refugee granted to him by Sweden also on Slovak territory and (ii) the exclusion

	provisions were found to be not applicable to him. It reiterates in this respect that the examination of any risks and objections linked to a person's possible removal from the territory of the State is intrinsic to actions "taken with a view to deportation or extradition". Even if such an examination establishes that such risks and objections are well-founded and capable of preventing the person's removal, such a possible future outcome cannot in itself retroactively affect the lawfulness of detention pending examination of a request for extradition. The salient issue in the present case is thus whether it can be said that action was being taken with a view to the applicant's extradition throughout the whole duration of his detention and, consequently, whether it was justified under Article 5§1(f) of the Convention. The Court emphasises that detention "with a view to extradition" can only be justified as long as the extradition is in progress and there is a true prospect of executing it. As can be seen from the case file, following the hearing of the applicant on 10 March 2015, it took six months (until 9 October 2015) for the prosecutor to ask the Regional Court to allow the applicant's extradition to Russia. More than three further months elapsed before a hearing was held before the Regional Court on 26 January 2016, but it was adjourned with a view to requesting additional information from the Russian authorities; however, no such information was forthcoming. The Government have not submitted any information in respect of any other requests made or avenues explored or any details regarding subsequent steps, save for the fact that on 8 September 2016, a new hearing was held before the Regional Court, at which the applicant's extradition was authorised. While the Supreme Court ruled in its decision of 16 March 2015 that the exclusion provision of Article 12§2(b) of Directive 2011/95/EU was applicable to the applicant (given that he was suspected of having committed a serious non-political crime, which prevented Slovakia from accepting and applying the refugee status conferred on him by Sweden), in its decision of 2 November 2016 another chamber of the same court reached the opposite conclusion – even though no new information had become available in the meantime. More importantly, information about the applicant's refugee status (which constituted the main reason for the decision of 2 November 2016) as well as documents relating to his criminal prosecution in Russia (which allowed for an assessment – for the purposes of the applicability of the relevant exclusion clauses – of the political/non-political nature of his acts) had been available to the Slovak authorities since February 2015. The respondent Government have failed to establish that the authorities proceeded in an active and diligent manner when gathering all necessary information and adjudicating legal challenges raised by the case at hand. Nothing prevented the courts from reaching a final decision on the admissibility of the applicant's extradition much earlier than they in fact did. The grounds for the applicant's detention, therefore, did not remain valid for the whole period concerned (one year, nine months and eighteen days), and the authorities

	failed to conduct the proceedings with due diligence. *[paras. 62, 64, 68 through 74, 76, 80 and through 83]*
Turdikhojaev v. Ukraine No.: 72510/12 Type: Judgment Date: 18 March 2021 Articles: Y: 3, 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) – extradition (procedure) – ill-treatment Links: English only Translations: Ukrainian	*Circumstances:* Extradition of a national of Uzbekistan. The applicant applied unsuccessfully for asylum in Ukraine and, in the course of the extradition proceedings (after the extradition was granted), was granted refugee status in Sweden. The decision to extradite the applicant was revoked by Ukrainian authorities after they requested and received a copy of the Swedish decision to grant the applicant refugee status in Sweden from the Swedish Embassy in Kyiv. The case concerns the applicant's complaints that his detention in Ukraine, while the authorities examined the question of his extradition to Uzbekistan, was in breach of Article 5 of the Convention, and that the conditions of his detention and his placement in a metal cage during court hearings was in breach of Article 3 of the Convention. *Relevant complaints:* 1. Under Article 3 of the Convention, the applicant complained, inter alia, of his placement in a metal cage during court hearings. 2. The proceedings for the applicant's extradition had not been conducted with the requisite diligence – the Ukrainian authorities had been informed of his refugee status in Sweden, which had constituted a bar to his extradition under domestic law, on 12 April 2013, but he had not been released until 7 June 2013. *Court's conclusions:* 1. Holding a person in a metal cage during a court hearing – having regard to its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – constitutes in itself an affront to human dignity in breach of Article 3 of the Convention. In the present case, the Government did not provide any evidence that there had been an actual and specific security risk in the courtroom which had necessitated the measure. *[paras. 40 and 41]* 2. It is uncontested that the General Prosecutor's Office of Ukraine received a definitive confirmation of the applicant's refugee status in Sweden on 16 May 2013 at the latest. From that date on, the applicant's detention could no longer be justified under Article 5§1(f) 3 of the Convention. However, the applicant was not released until 7 June 2013. *[paras. 50 and 51]*
Looker v. Spain No. 51568/19 Type: Decision Date: 11 May 2021	*Circumstances:* Extradition of a British national from Spain to Thailand for the purposes of prosecution for murder. Interim measure complied with. *Relevant complaint:* The extradition to Thailand would expose the applicant to treatment incompatible with Articles 2 (in conjunction with Protocol No. 13) and 3 of the Convention, as he would face the risk

Articles: N: 2, 3, 6 Keywords: – extradition (procedure) Links: English only Translations: not available	of being sentenced to death, or alternatively, to life imprisonment. He also complained of the potential conditions of detention he would suffer, under the same articles. He further complained that his extradition to Thailand would amount to a violation of Article 6 of the Convention on the grounds that he would not have a fair trial in Thailand. *Court's conclusions:* Extradition proceedings under Spanish law comprise three stages: the first stage requires a decision by the Council of Ministers (wielding its executive power) to initiate the extradition in question; the second stage consists of a domestic court (exercising judicial power) analysing and delivering a decision regarding whether the extradition should be allowed on legal grounds; and the third stage consists of another decision issued by the Council of Ministers (again wielding executive power), which can either give final approval for the extradition to take place if the judicial decision has authorised it, or definitively block it regardless of the previous judicial approval. The Court agrees with the Government that it was the Audiencia Nacional, not the Council of Ministers, that decided that the assurances received from the Thai authorities were sufficient for the applicant to be extradited without violating his right to life or his right not to be subjected to inhuman or degrading treatment. Any alleged violation of Articles 2 and 3 of the Convention on the basis of an incorrect assessment of the sufficiency of those assurances would have been caused by the decisions of the Audiencia Nacional. The Council of Ministers' decision was limited to stating that there were no reasons of national sovereignty, security, public order or other essential national interests not to grant the extradition. The Court observes that the applicant complained in his second *amparo* appeal that the Audiencia Nacional had not duly considered the assurances requested from the Thai authorities. However, the issue which the applicant complained of (the sufficiency of those assurances in the light of the requirement that his fundamental rights be observed) had already been ruled on by the Audiencia Nacional, by a decision that had become final, and it could not be brought before the Constitutional Court by the time the applicant lodged his *amparo* appeal. The Court notes that the applicant indirectly tried to contest the sufficiency of those assurances by appealing against the subsequent decision of the Council of Ministers, but the proper time to do that had already elapsed. As a result, the *amparo* appeal was declared inadmissible for the applicant's non-compliance with the thirty day time-limit. Furthermore, the applicant had already lodged a first *amparo* appeal with the Constitutional Court against the decisions of the Audiencia Nacional provisionally authorising his extradition, subject to receiving sufficient assurances from the Thai authorities. That first *amparo* appeal was declared inadmissible by the Constitutional Court on 26 July 2018 because no violation of fundamental rights could possibly take place before the assurances had been delivered and assessed. Thus the applicant was aware that he could have lodged an *amparo* appeal against the judicial

	decisions of the Audiencia Nacional within the extradition proceedings. The applicant did not provide the national courts with the opportunity that is in principle intended to be afforded to the Contracting States by Article 35 of the Convention – namely the opportunity to prevent Convention violations through their own legal system. *[paras. 60, 64, 65 and 67]*
A.K. and Others v. Russia Nos.: 38042/18, 44546/18 & 20033/19 Type: Judgment Date: 18 May 2021 Articles: Y: 3, 5§1, 5§4 Keywords: – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion of two nationals of Uzbekistan from Russia to Uzbekistan. The applicants were charged in Uzbekistan with religious extremism. The first applicant, an asylum seeker, was expelled to Uzbekistan when he refused application of an interim measure by the Court. The second applicant, a failed asylum seeker, was released from custody pending expulsion, immediately rearrested and remanded to custody pending extradition but eventually released for expiry of the time limit for the length of custody pending extradition under Russian law. *Relevant complaint:* The applicants complained under Article 3 of the Convention that their expulsion to Uzbekistan would put them at risk of torture and/or inhuman or degrading treatment. The second applicant submitted that in the event of his return to Uzbekistan, he would face a risk of torture because he belonged to a group of people who had been systematically ill-treated in connection with their prosecution for religious and political crimes. *Court's conclusions:* The first applicant, who was represented by lawyer, expressed his wish to return to Uzbekistan for personal reasons and despite the risks alleged by him, and requested the Court, of his own free will, to lift an interim measure, following which he was expelled to Uzbekistan. Following his removal to Uzbekistan, neither the applicant, nor his lawyers in any of the submissions claimed that the Russian authorities had actually exposed him to a risk of ill-treatment by removing him to Uzbekistan. In his observations the applicant made a vague reference to ill-treatment allegedly suffered at the hands of the authorities in Uzbekistan but he neither detailed his allegations of ill-treatment nor referred to any impediment to providing further evidence. Nothing indicates that he had been effectively prevented from providing an account of ill-treatment if it had taken place. In these circumstances, the Court cannot but conclude that the applicant's claim of alleged ill-treatment in Uzbekistan is not supported by the material in his case file. It is apparent from the material in the second applicant's case file that in the course of the extradition proceedings he specifically argued that he faced a risk of ill-treatment in Uzbekistan. Furthermore, the applicant argued in his deportation proceedings that he had been prosecuted for religious extremism. Furthermore, in support of his respective application for temporary asylum, the applicant submitted to the migration authorities information about the risks that would face him in the event of his being returned; that application was rejected. Additionally, it can be seen from the search and arrest warrants and extradition request submitted by the Uzbek authorities that the basis of those

	warrants and request was clear – namely, that the second applicant stood accused of religiously motivated crimes. The Uzbek authorities thus directly associated him with a group whose members have previously been found to be at real risk of being subjected to proscribed treatment. The Russian authorities were therefore presented with evidence capable of proving that the applicant belonged to a vulnerable group of persons who were systematically exposed to ill-treatment in Uzbekistan, in breach of Article 3 of the Convention; the removal of the applicant would therefore expose him to a real risk of such ill-treatment. It is apparent from the material in the applicant's case file that the Russian authorities had at their disposal sufficiently substantiated complaints pointing to a real risk of ill treatment. It is apparent from copies of the respective decision that the migration service, having examined the applicant's application for temporary asylum status, did not carry out a rigorous scrutiny of his arguments. It limited the reasoning of its decision to general statements about the absence of any risks facing the applicant and did not review his arguments in the light of the Court's abundant case law concerning the treatment of persons accused of crimes of extremism in Uzbekistan and the easily accessible international reports on that matter. The migration authorities' review of the applicant's application for temporary asylum and the domestic courts' examination of his claims were perfunctory and did not include a rigorous and independent assessment of whether substantial grounds had been shown for believing that the applicant faced a real risk of treatment violating Article 3 of the Convention. The Court therefore concludes that the domestic authorities did not duly assess the applicant's argument that there was risk of his facing ill-treatment in Uzbekistan. The applicant has been charged with membership of banned religious organisation by the Uzbek authorities. The Court has previously established that individuals whose extradition was sought by Uzbek authorities on charges of religiously or politically motivated crimes constituted a vulnerable group that would face a real risk of treatment contrary to Article 3 of the Convention in the event of their removal to Uzbekistan. The present case is similar to those cases, given the nature of the charges against the applicant, the manner in which the indictment against him was issued and the lack of effective judicial review. The Court finds no reason in the present case to depart from its earlier findings on the matter. The Court notes with attention the cautious indications of an improvement in the human rights situation in Uzbekistan included in the independent reports; however, nothing in the parties' submissions in respect of the present case or the relevant material from independent international sources constitutes at this moment a sufficient basis for concluding that persons prosecuted for religiously motivated crimes no longer run a risk of treatment breaching Article 3 of the Convention. *[paras. 35 and 41 through 45]*

	[NOTE: The complaint of the third applicant concerned only lawfulness of his detention pending expulsion and is not relevant for extradition. Therefore, it has not been included in this summary.]
Bivolaru and Moldovan v. France Nos.: 40324/16 & 12623/17 Type: Judgment Date: 25 May 2021 Articles: Y: 3; N: 3 Keywords: – assurances – asylum – extradition (grounds for refusal) – ill-treatment Links: French only Translations: not available	*Circumstances:* Surrender of two Romanian nationals from France to Romania on the basis of a European arrest warrant ("the EAW") for the purposes of enforcement of sentences of imprisonment. The second applicant had been granted asylum in Sweden (and Romanian requests for his extradition were denied by Sweden). *Relevant complaints:* 1. According to the first applicant, the presumption of equivalent protection is inapplicable in the present case for the following reasons. First, under the Framework Decision on the EAW, the French courts were not required to automatically surrender him to the Romanian authorities. This text is binding on States as to the results to be achieved while leaving them room for maneuver as to the form and means to achieve them. In addition, as interpreted by the CJEU, which called into question the principle of automatic surrenders, the Framework Decision leaves a margin of appreciation to the executing judge where there is a risk of violation of the fundamental rights of the person concerned in the event of surrender. Second, the French judge should have referred to the CJEU a preliminary ruling concerning the interpretation of what it meant, in the Aranyosi and Căldăraru judgment, by "a systemic or generalized failure concerning certain detention centers" and by a "serious and proven" reason characterizing the existence of a risk of inhuman and degrading treatment in the event of surrender. In the absence of such a referral, the full potential of the European Union's control mechanism has not been implemented by the national courts. In the absence of application of the presumption of equivalent protection, by granting his surrender to the Romanian authorities, when the information provided by them confirmed the risk that he would be exposed to inhuman or degrading treatment in Gherla prison (by reason of the conditions of detention within this overcrowded establishment, where individual space is insufficient and the most basic hygiene rules not respected), the French judge violated Article 3 of the Convention. 2. The second applicant considers that the presumption of equivalent protection is not applicable to the circumstances of his surrender to the Romanian authorities. In general, the EAW system has given rise to significant developments in case-law which would attest to a questioning of the principle of mutual trust between the Member States due to the violation of fundamental rights by some of them. The multiplication of these exceptions would have led to the recognition of a greater margin of maneuver for the benefit of the judicial authorities seized of an EAW. He should not lose the refugee status granted by Sweden and that the protection he enjoyed under the Geneva Convention should

	have been decisive in the assessment of the risks he would incur in the event of return to Romania. It does not appear from the rules of Union law, in the absence of such an interpretation given by the CJEU, that when a person has obtained protection as a refugee from a Member State, the mere fact that the State of which he is a national has subsequently joined the European Union entails ipso facto the loss of this protection. It was not for the French courts to assess the refugee status granted by the Swedish authorities, who had, moreover, informed them that it was maintained. By failing to recognize the protection attached to his status as a refugee, the domestic courts have violated Article 3 of the Convention. Their decision amounts to denying the protection that a State party to the ECHR and a member of the European Union has intended to grant in the name of the protection of crucial imperatives, and runs counter to the principle of non-refoulement imposed on France both under the Geneva Convention and the Convention, taking into account the interests that the granting of refugee status is intended to protect. *Court's conclusions:* 1. When applying European Union law, the Contracting States remain subject to the obligations which they have freely entered into by acceding to the Convention. These obligations are, however, to be assessed against the presumption of equivalent protection. A measure taken by virtue of international legal obligations must be deemed justified since it is common ground that the organization in question grants fundamental rights at least equivalent protection, that is to say not identical but "equivalent" to that provided by the Convention, it being understood that a finding of "equivalent protection" of this type must be reviewable in the light of any relevant change in the protection of fundamental rights. If the organization is considered to offer such equivalent protection, it is presumed that States comply with the requirements of the Convention when they are only fulfilling legal obligations resulting from their membership in the organization. The application of the presumption of equivalent protection in the EU legal order is subject to two conditions: the absence of room for maneuver for the national authorities and the deployment of the full potential of the control mechanism provided for by the European Union law. First, the alleged infringement of a right protected by the Convention must arise from an international legal obligation incumbent on the respondent State and for the execution of which the domestic authorities have neither a discretion nor a room to maneuver. Secondly, the mechanism for monitoring fundamental rights provided for by the EU law, which the Court has recognized as ensuring human rights protection equivalent to that of the Convention, must have been fully in place. When domestic authorities implement the EU law without a discretionary power, the presumption of equivalent protection applies. This is the case

	when the mutual recognition mechanisms oblige the judge to presume sufficient respect for fundamental rights by another Member State. However, this presumption can be rebutted in the context of a given case. The Court must verify that the principle of mutual recognition is not applied automatically and mechanically, to the detriment of fundamental rights. In this spirit, when the courts of States which are both Parties to the Convention and members of the EU are called upon to apply a mutual recognition mechanism established by the EU law, such as that provided for the execution of an EAW issued by another EU Member State, it is in the absence of any manifest insufficiency of the rights protected by the Convention that they give this mechanism its full effect. On the other hand, if they are presented with a serious and substantiated complaint in the context of which it is alleged that there is a manifest insufficient protection of a right guaranteed by the Convention and that the law of the EU does not allow this insufficiency to be remedied, they cannot waive the examination of this complaint on the sole ground that they are applying the EU law. The legal obligation weighing on the judicial authority executing the EAW results from the relevant provisions of the Framework Decision as interpreted by the CJEU since the Aranyosi and Căldăraru judgment. According to the case-law of the CJEU, the executing judicial authority was authorized to derogate, in exceptional circumstances, from the principles of trust and mutual recognition between Member States by postponing or, where appropriate, refusing the execution of the EAW. Hearing a challenge to the execution of the EAW on the grounds that it would expose the applicant to the risk of being detained in Romania in conditions contrary to Article 4 of the Charter of Fundamental Rights, it was for the executing judicial authority to assess the reality of the systemic failures in the issuing Member State alleged by the applicant and then, if necessary, carry out a specific and precise examination of the individual risk of inhuman and degrading treatment to which he would be exposed in the event of surrender. The investigating chamber should have refused the execution of the EAW if, at the end of the control described above, it had considered that there were serious and proven reasons to believe that the applicant will run, in the event of surrender, a real risk of being subjected to inhuman and degrading treatment because of the conditions of his detention. However, this power of appreciation of the facts and circumstances as well as the legal consequences to be attached thereto, which the judicial authority has, is exercised within the framework strictly defined by the case law of the CJEU and to ensure the execution of a legal obligation in full compliance with the European Union law, namely Article 4 of the Charter of Fundamental Rights which provides protection equivalent to that resulting from Article 3 of the Convention. In these conditions, the executing judicial authority cannot be regarded as having, in order to ensure or refuse the execution of the EAW, an independent

	margin of maneuver such as to lead to the non-application of the presumption of equivalent protection. As regards the second condition of application, the Court notes the absence, in view of the CJEU case-law, of serious difficulty linked to the interpretation of the Framework Decision and the question of its compatibility with fundamental rights, which would make it possible to consider that it would have been necessary to refer a preliminary ruling to the CJEU. The second condition for the application of the presumption of equivalent protection must therefore be regarded as fulfilled. Having regard to the foregoing, the Court considers that the presumption of equivalent protection is applicable to the present case. Consequently, its task is limited to determining whether the protection of the rights guaranteed by the Convention is vitiated in the present case by a manifest insufficiency capable of overturning this presumption, in which case respect for the Convention as a "constitutional instrument of European public order" in the field of human rights would prevail over the interest of international cooperation. The information provided by the issuing State has not been sufficiently put into perspective with the case-law, in particular as regards the situation of the Gherla prison, presented as the one in which the applicant was to be imprisoned. This establishment is experiencing an endemic rate of prison overcrowding and that, in such a situation, the lack of personal space constitutes the central element to be taken into account. However, this aspect of the applicant's future conditions of detention was not seriously taken into consideration, the investigating chamber retaining the prospect of a "minimum space of 2 to 3 m^2" when the Romanian authorities had indicated that the applicant would have a "space between 2 and 3 m^2" in Gherla prison. It was further stated that the area reserved for sanitary facilities was included in the area of this personal space. The conditions of detention at the Rahova penitentiary center presented as the establishment in which the applicant was to be placed in quarantine upon arrival in Romania do not offer the persons detained there a satisfactory personal space. In the Court's case-law, an area of 3 m^2 of floor space per prisoner in a collective cell constitutes the minimum standard applicable with regard to the requirements of Article 3 of the Convention. Although the Romanian authorities did not rule out that the applicant could be detained in a prison establishment other than that of Gherla, the precaution taken in this respect by the executing judicial authority, namely the recommendation that the applicant be detained in an establishment offering identical if not better conditions, is not sufficient to rule out a real risk of inhuman and degrading treatment since, on the one hand, it did not allow for carry out an assessment of such a risk in the case of a given establishment and, on the other hand, that the elements attesting to the existence of the systemic failures of the penitentiary system of the issuing State which it had established that a significant number of prisons did not offer conditions of detention in

	accordance with the standards. In view of all the foregoing, the executing judicial authority had sufficiently solid factual basis to characterize the existence of a real risk that the applicant would be exposed to inhuman and degrading treatment as a result of his conditions of detention in Romania and could not, therefore, rely exclusively on the statements of the Romanian authorities. *[paras. 97, 98, 100 through 103, 113 through 116, 122, 123, 125 and 126]* 2. The Court of Cassation dismissed the applicant's request that it refer a preliminary question to the CJEU on the consequences to be drawn on the execution of a EAW for the granting of refugee status by a Member State to a national of a third State who subsequently also becomes a Member State. This is a real and serious question as to the protection of fundamental rights by the EU law and its articulation with the protection resulting from the Geneva Convention of 1951 on which the CJEU has never ruled. Because of the choice of the Court of Cassation not to proceed with the referral to the CJEU, it ruled without the relevant international mechanism for monitoring respect for fundamental rights, in principle equivalent to that of the Convention. In view of this choice and the importance of the issues in question, the presumption of equivalent protection does not apply. The Framework Decision on the EAW does not provide for a ground for non-execution relating to the refugee status of the person whose surrender is requested. However, the granting of refugee status to the applicant by the Swedish authorities reveals that, at the time when this status was granted, the said authorities considered that there was sufficient evidence to establish that he was in danger of being persecuted in his country of origin. This must be particularly taken into account when examining the reality of the risk that the applicant would suffer treatment contrary to Article 3 of the Convention in the event of surrender. This examination must be carried out in the light of the situation of the person concerned which prevailed on the date of the decision making of the executing judicial authority and taking into account the general economy of the EAW. The executing judicial authority considered that the applicant's refugee status was an element which it had to take into particular account and reconcile with the principle of mutual trust but it did not constitute an outright derogation from this principle justifying in itself the refusal to execute the EAW. Such a position does not in itself conflict with Article 3 of the Convention on condition that the executing judicial authorities assess, at the time of their decision, whether or not the applicant is exposed to a risk of inhuman or degrading treatment if surrendered. The investigating chamber requested information with the Swedish authorities to clarify the applicant's refugee status. In particular, it asked about the consequences of Romania's accession to the EU, a year after the status was granted. It also requested an update of the information concerning the applicant and whether there were any plans to withdraw

	his status following his arrival in France under a false identity. The Swedish authorities replied that they intended to maintain the applicant's refugee status without, however, commenting on the persistence, ten years after its granting, of the risk of persecution in his country of origin. Nothing in the file investigated by the executing judicial authority or information brought by the applicant before the Court indicates that the applicant was still in danger, in the event of surrender, of being persecuted for religious reasons in Romania. In these particular circumstances, and even if the Swedish authorities did not intend to lift the applicant's refugee status, the executing judicial authority, after a thorough and complete examination of the applicant's personal situation, did not have sufficiently solid factual bases to characterize the existence of a real risk of violation of Article 3 of the Convention and refuse, for this reason, the execution of the EAW. The applicant confined himself, before the domestic courts, to denouncing, in a very general manner, the situation reserved for political opponents in Romania, including in prison, and not the conditions of detention in Romanian prisons, so that the executing judicial authority did not have sufficient information in this regard. Regarding the elements presented to the investigating chamber, he maintained that "torture and inhuman treatment remained commonplace in Romania" and that a CPT report from 2015 mentioned "beatings on prisoners". He also claimed a violation of Article 3 of the Convention resulting from the police operation against certain members of MISA in 2004. In these circumstances, the description made by the applicant before the executing judicial authority, in support of his request not to execute the EAW to which he was subject, of the conditions of detention in Romanian penitentiary establishments was neither sufficiently detailed nor sufficiently substantiated to constitute prima facie evidence of a real risk of treatment contrary to Article 3 of the Convention in the event of his surrender to the Romanian authorities. In the circumstances of the case, it was not for the executing judicial authority to request additional information from the Romanian authorities on the future place of detention of the applicant and on the conditions and regime of detention which would be reserved for him in order to identify the existence of a real risk that he would be subjected to inhuman and degrading treatment as a result of his conditions of detention. *[paras. 131, 136 through 138, 141, 143 and 144]*
Karpenko v. Ukraine No. 23361/15 Type: Judgment Date: 10 June 2021 Articles: Y: 5§1	*Circumstances:* Extradition from Ukraine to Russia. The applicant was repeatedly arrested for the purposes of extradition (on the basis of only a fax and partly illegible copy of the extradition request) and released (by the Court of Appeal) because the original of the extradition request was not delivered.

Keywords: – custody (lawfulness) – extradition (custody) Links: English only Translations: Ukrainian	*Relevant complaint:* The applicant's detention was in breach of Article 5§1 of the Convention and, contrary to Articles 5§4 and 13 of the Convention, he had not been able to obtain his effective release despite the domestic Court of Appeal holding that there was no legal basis for his detention *Court's conclusions:* The Court of Appeal established that there was no sufficient basis under domestic law for the applicant's extradition detention since there was no appropriate copy of the extradition request in the file (the extradition request was only available as a fax copy, not a copy certified by the Ukrainian authorities; moreover, the name of the person to be extradited was not legible; nor were the places bearing the signature of the official and the stamp of the Russian authorities). There was no indication that there was any change in that respect after 14 January 2015. Nevertheless, the authorities prevented the applicant's effective release until 13 February 2015 by repeatedly arresting him immediately upon his pro forma "release", and did so on the grounds the Court of Appeal had already held were invalid. The applicant's detention after 14 January 2015 was, therefore, tainted by arbitrariness. *[paras. 35 through 37]*
Sándor Varga and Others v. Hungary Nos.: 39734/15, 35530/16 & 26804/18 Type: Judgment Date: 17 June 2021 Articles: Y: 3 Keywords: – ill-treatment – life sentence Links: English only Translations: not available	*See the summary of the similar case of T.P. and A.T. v. Hungary.*
Khachaturov v. Armenia No.: 59687/17 Type: Judgment Date: 24 June 2021 Articles: Y: 3 Keywords: – assurances	*Circumstances:* Extradition of a Russian national with chronic severe cardiovascular problems from Armenia to Russia for the purposes of prosecution. Following filing the application, the applicant requested asylum in Armenia. The Office of the Prosecutor General of Russia gave assurances that a doctor with the relevant specialisation would travel with a special convoy to provide the applicant with medical assistance if necessary during his transfer. Interim measure complied with. *Relevant complaint:* The applicant's extradition to Russia would be contrary to the requirements of Articles 2 and 3 of the Convention, considering the medical evidence in respect of the risks of his

– extradition (grounds for refusal) – extradition (procedure) – ill-treatment Links: English only Translations: Armenian	transfer. The assurances of the Office of the Prosecutor General of Russia were highly formalistic and superficial considering that the Russian authorities had not been provided with specific information concerning the applicant's state of health. *Court's conclusions:* Throughout the domestic proceedings and in the proceedings before the Court the Armenian authorities expressed doubts in relation to the applicant's medical condition and the claimed risks. Nevertheless, the authorities did not initiate their own assessment of the applicant's state of health and the applicant's request seeking the appointment of a forensic medical expert was refused by the Court of Appeal. Furthermore, neither in the domestic proceedings nor in the proceedings before the Court did the authorities question the reliability of the medical certificates submitted by the applicant or the credibility of the medical professionals who had issued them. While it is true that the applicant did not submit any medical documents concerning the history of his medical condition, such as the results of his past medical examinations and treatment received, if any, in his submission his state of health sharply worsened after 2015 as a result of the anxiety caused by his prosecution. The Prosecutor General made a decision to grant the request to extradite the applicant on 23 June 2017. Although by then the applicant had already been transferred to the Central Prison Hospital due to the deterioration of his health, there is nothing to indicate that the Prosecutor General was in possession of any medical documents concerning the applicant's state of health when taking the decision. Given that the assurances provided by the Russian authorities seem to have been limited merely to the availability of medical supervision during the applicant's transfer, they alone cannot provide a sufficient basis to conclude that the anticipated conditions of the transfer would remove the existing risk of a significant deterioration in the applicant's health if his removal from Armenia were to be effected. *[paras. 93, 95 and 103]*
Bancsók and László Magyar (no.2) v. Hungary Nos.: 52374/15 & 53364/15 Type: Judgment Date: 28 October 2021 Articles: Y: 3 Keywords: – ill-treatment – life sentence Links: English only Translations: not available	*See the summary of the similar cases of T.P. and A.T. v. Hungary and Vinter and others v. United Kingdom.*

De Sousa v. Portugal No.: 28/17 Type: Decision Date: 7 December 2021 Articles: N: 5§1(f), 5§5 Keywords: – assurances – custody (lawfulness) – extradition (custody) – extradition (procedure) – in absentia Links: French only Translations: not available	*Circumstances:* Arrest of a dual Portuguese and American national in Portugal on the basis of a European arrest warrant ("EAW") issued by Italian authorities for the purposes of her surrender to Italy in order to serve a sentence of imprisonment imposed in her absence for participation in a kidnapping committed as an agent of the United States Central Intelligence Agency. In the course of the surrender proceedings, the applicant's sentence was reduced following a presidential pardon issued in Italy. Subsequently, the Italian authorities lifted the EAW and the applicant was released from custody in Portugal and the surrender proceedings were closed. *Relevant complaint:* The purpose of the EAW was to enforce a judgment delivered in Italy, which constituted a flagrant denial of justice against her. The Portuguese authorities ordered her detention and issued a decision declaring the EAW enforceable on the wrong assumption that she would benefit from a new trial after her surrender to the Italian authorities. The Portuguese authorities were informed on 27 June 2016 by the Italian Central Authority that the criminal case would not be reopened after her surrender to the Italian authorities. They were slow to bring this information to her attention in order to give effect to the decision of the Court of Appeal, which had upheld the EAW. The applicant did not receive a copy of the Central Authority's letter until 10 October 2016, when she was informed by the Court of Appeal that the decision relating to the EAW was final and binding. The applicant has consistently asserted before the Portuguese authorities that her surrender to the Italian authorities contravened Council Framework Decision on the EAW given that she had been tried in absentia and that she had not benefited from a new trial in Italy. The Portuguese authorities did not seek to ascertain the reality of the situation, by requesting additional information in accordance with Article 15§2 and §3 of the Framework Decision on EAW. Neither did the Portuguese authorities seek to obtain diplomatic assurances as to the possibility of obtaining the reopening of the criminal proceedings. The Portuguese authorities applied the mutual recognition mechanism automatically and mechanically, to detriment to their fundamental rights. It was for the Italian and Portuguese authorities to cooperate in order to guarantee her fundamental rights, in particular by means of diplomatic assurances to that effect. *Court's conclusions:* The Court finds no element of bad faith on the part of the domestic authorities in the present case. It does not in fact appear that they resorted to inadmissible tricks or stratagems against the applicant. On the contrary, it appears from the case file that the authorities endeavored to correctly apply the domestic legislation and to respect the applicant's rights at the domestic level. Admittedly, it is apparent both from the decision of the Court of Appeal of 12 January 2016 and from the final judgment of the Supreme Court of 10 March 2016 that the Portuguese courts had initially believed that the applicant would benefit from a new trial, contrary to what was indicated in point 3.4. of the EAW form,

	namely that the applicant was simply informed of her right to a new procedure. However, such a misunderstanding does not mean that the second detention of the applicant, ordered at the end of the proceedings relating to the EAW, with a view to her surrender to the Italian authorities, was unlawful or that the title ordering the deprivation of liberty was prima facie invalid. Furthermore, following the letter from the Italian central authority clarifying the procedural rights of a person convicted in absentia in Italy, the Court of Appeal of Lisbon did note, in its decision of 6 October 2016, that it was up to the Italian authorities to guarantee the applicant's procedural rights, in accordance with Italian law, and that any request for clarification in this respect should be addressed to the Italian authorities and not to the Portuguese authorities, since the decision authorizing the surrender had become final, by virtue of the exhaustion of domestic remedies. The Lisbon Court of Appeal therefore corrected the error contained in the decision declaring the EAW enforceable by taking into account the applicant's arguments as to the circumstances which, according to her, prevented the execution of the EAW. As regards the applicant's argument that the Portuguese authorities, acting in bad faith, delayed bringing to her attention the Italian Central Authority's letter of 27 June 2016, the Court notes that the applicant received a copy of it on 10 October 2016, when the decision rendered a few days earlier by the Lisbon Court of Appeal on the said letter was notified to her. The Court of Appeal did not rule earlier because, in accordance with Article 92§1 of the CCP, it was awaiting a Portuguese translation of the letter in question, which was transmitted on 26 September 2016. It does not therefore appear that the Lisbon Court of Appeal deliberately delayed bringing the letter of 27 June 2016 to the applicant's attention. The Court fails to see how the Supreme Court's judgment of 16 November 2016 declaring the applicant's application for review inadmissible shows excessive formalism. In the Court's view, in this case, the Supreme Court confined itself to applying domestic law which does not provide for the possibility of requesting the review of a final decision concerning an EAW or extradition. As a superabundant point, in so far as the applicant alleges a flagrant denial of justice in Italy which should have resulted in the refusal by the Portuguese judicial authorities to execute the EAW issued against her, the Court observes that, according to the information from the Italian Central Authority, the applicant had received all the notifications relating to her trial and had appointed a lawyer to represent her; she therefore had sufficient knowledge of the proceedings and charges against her. Therefore, it does not appear that the principle of mutual recognition was applied, in the present case, to the detriment of her fundamental rights. *[paras. 80, 81, 83, 84 and 88]*
Savran v. Denmark No.: 57467/15 Type: Judgment [GC]	*Circumstances:* Expulsion of a Turkish national from Denmark to Turkey following criminal proceedings in which the Danish authorities found that the applicant had commited assault that cuaed

Date: 7 December 2021 Articles: N: 3; Y: 8 Keywords: – expulsion – ill-treatment Links: English, French Translations: Dutch, Russian	death of the victim but was exempt from punishment by virtue of insanity caused by the applicant's paranoid schizophrenia. *Relevant complaint:* The applicant suffered from paranoid schizophrenia, a very serious and long-term illness, recognised internationally, including by the World Health Organisation. It had been medically established that this mental illness could be so severe that inadequate treatment could result in a serious, rapid and irreversible decline in patients' health that was associated with intense suffering, or in a significant reduction in life expectancy, and could pose a threat to such patients' own safety and to the safety of others. In its decision of 13 January 2015 the High Court had done no more than rely on the general information obtained from MedCOI on the availability of treatment and medication in Turkey. A wide range of sources had criticised the methods and results of MedCOI's work. In particular, it was unclear how the information had been obtained; moreover, the information provided was always anonymised, which raised doubts as regards the transparency, accuracy and reliability of the relevant sources. More specifically, in the applicant's case that information was clearly insufficient to counterbalance the very serious medical evidence submitted by him. Furthermore, even the general availability of psychiatric treatment in Turkey was open to doubt. The applicant referred to the World Health Organisation Mental Health Atlas of 2017, which indicated that there were 1.64 psychiatrists per 100,000 inhabitants in Turkey, the lowest rate of psychiatrists in relation to the country's population among the countries in the World Health Organisation. Against that background, it was particularly important that the Danish authorities should have examined the question whether the appropriate treatment would actually be accessible to the applicant; however, the High Court had not addressed that issue. Appropriate treatment in his particular case was absent or de facto unavailable to him owing to the lack of essential health services, facilities, resources and/or medicines. He was only able to obtain certain tablets infrequently, as well as the high cost of treatment. It had been of particular importance for individual assurances to be obtained in his case prior to his expulsion. Given that the foreseeable consequences of the lack of appropriate treatment had been clearly described by the psychiatrists in their statements in the domestic proceedings, it had fallen to the Danish authorities to satisfy themselves that the applicant's treatment would not be interrupted. That had not been an insurmountable task for them as Denmark had a large embassy in Turkey and could have made efforts to ensure that the applicant's medical treatment would not be interrupted in the event of his removal. In the absence of such assurances, however, the returning State should have refrained from deporting the applicant. *Court's conclusions:* Whilst, admittedly, schizophrenia is a serious mental illness, the Court does not consider that that condition can in itself be regarded as sufficient to bring the applicant's complaint

	within the scope of Article 3 of the Convention. While the Court finds it unnecessary to decide in the abstract whether a person suffering from a severe form of schizophrenia might be subjected to "intense suffering" within the meaning of the Paposhvili threshold test, it considers, having reviewed the evidence adduced by the parties before it and the evidence before the domestic courts, that it has not been demonstrated in the present case that the applicant's removal to Turkey exposed him to a serious, rapid and irreversible decline in his state of health resulting in intense suffering, let alone to a significant reduction in life expectancy. According to some of the relevant medical statements, a relapse was likely to result in "aggressive behaviour" and "a significantly higher risk of offences against the person of others" as a result of the worsening of psychotic symptoms. Whilst those would have been very serious and detrimental effects, they could not be described as "resulting in intense suffering" for the applicant himself. Even assuming that a certain degree of speculation is inherent in the preventive purpose of Article 3 and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment, the Court is not convinced that in the present case, the applicant has shown substantial grounds for believing that, in the absence of appropriate treatment in Turkey or the lack of access to such treatment, he would be exposed to a risk of bearing the consequences set out in paragraph 183 of the judgment in Paposhvili. The circumstances of the present case do not reach the threshold set by Article 3 of the Convention to bring the applicant's complaint within its scope. That threshold should remain high for this type of case. *[paras. 141, 143, 146 and 147]* *NOTE: There are three separate opinions attached to the Grand Chamber judgment.*
Komissarov v. the Czech Republic No.: 20611/17 Type: Judgment Date: 3 February 2022 Articles: Y: 5§1(f) Keywords: – asylum – custody (lawfulness) – custody (length) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition of a Russian national from the Czech Republic to Russia for the purposes of prosecution for fraud. The applicant was held in detention pending extradition from 17 May 2016, following judicial approval of his extradition and its authorisation by the Minister of Justice of the Czech Republic. On the following day, the applicant lodged an asylum application which hindered his extradition. *Relevant complaint:* The applicant's detention pending extradition was arbitrary as the time-limits prescribed by the domestic law for the processing of asylum applications had not been observed in his case and, thus, did not constitute any safeguard whatsoever against an excessively lengthy detention pending extradition. In addition, the domestic courts considered no alternative measures to detention. *Court's conclusions:* The applicant's detention pending extradition cannot as such be considered arbitrary, since it was due to the fact that his extradition had already been authorised but could not be carried out before the proceedings on his asylum application have ended. For situations in which extradition and asylum proceedings run concurrently, the domestic law provides separate time-limits for

	the processing of the asylum application and the delivery of a decision by the relevant authorities. Either way, the decision must be taken "without undue delay", which according to the relevant Supreme Administrative Court's case-law is meant to be, on a case-by-case consideration, in the range of days or weeks, at the very latest sixty days for examination of the asylum application by an administrative body and sixty days for each of the two levels of jurisdiction, if the decision taken as a result of the above examination is brought before the courts. These time-limits have been greatly exceeded in the present case: the administrative decision to dismiss the applicant's asylum application was only issued after eight months – that is to say four times longer than the maximum permissible period stipulated by the domestic law; the periods during which the case was examined at two separate judicial instances exceeded the respective prescribed time-limits as well. Thus, the asylum proceedings took almost seventeen months, instead of six months as provided by the domestic law. The existence or absence of time-limits is one of a number of factors which the Court might take into consideration in its overall assessment of whether domestic law was "sufficiently accessible, precise and foreseeable" (in other words, whether there existed "sufficient procedural safeguards against arbitrariness"). In and of themselves they are neither necessary nor sufficient to ensure compliance with the requirements of Article 5§1(f) of the Convention. However, where fixed time-limits exist, a failure to comply with them may be relevant to the question of "lawfulness", as detention exceeding the period permitted by domestic law is unlikely to be considered to be "in accordance with the law". In the present case, the strict time-limits for examination of the asylum applications constitute an important safeguard against arbitrariness. Therefore, both under the domestic law and the Convention, the domestic authorities were under an obligation to demonstrate the required diligence. However, the domestic authorities neither acknowledged nor reacted to the serious delays in the proceedings, despite the applicant's complaints regarding those delays. As a result of the delays in the asylum proceedings, the length of the detention pending extradition, which lasted eighteen months, was not in accordance with domestic law. In this context, there were two relevant elements: the time limit for the detention pending extradition, and the time-limit for dealing with the asylum claim. They both are inextricably linked – the time-limit for consideration of the asylum claim is intended, in the circumstances of the case, to ensure that the overall length of detention is not excessive. *[paras. 48 through 52]*
Shenturk and Others v. Azerbaijan No.: 41326/17, 8098/18, 8147/18 & 8384/18	*Circumstances:* Expulsion of four Turkish nationals from Azerbaijan to Turkey. All the applicants worked in Azerbaijan in private schools affiliated to the Gülen movement or in various companies affiliated to that movement. All the applicants were detained on the basis of the relevant arrest warrants issued by the Turkish authorities. The first applicant was arrested and detained in Azerbaijan before his

Type: Judgment Date: 10 March 2022 Articles: Y: 3, 5§1 Keywords: – expulsion – ill-treatment – relation between extradition and deportation or expulsion Links: English only Translations: not available	deportation to Turkey without any formal decision concerning his deprivation of liberty taken by the Azerbaijani authorities. As to the second applicant, the extradition proceedings were formally instituted against him and his detention pending extradition for a period of forty days was ordered by a competent court. On 12 July 2018 the Baku Court of Serious Crimes refused his extradition to Turkey and ordered his release from detention, but the second applicant was deported to Turkey immediately after the delivery of that decision in accordance with the Migration Code owing to his residence permit being cancelled by the Azerbaijani authorities. As regards the third and fourth applicants, extradition proceedings were formally instituted against them and their detention pending extradition for a period of forty days was ordered by the competent court. While those proceedings were still pending, instead of being released from detention pursuant to the court decisions taken at the request of the prosecuting authorities, they were handed over to the State Migration Service ("SMS") officers and were immediately taken to the temporary detention facility of the SMS and on the same day were deported to Turkey in accordance with the Migration Code owing to their residence permits being cancelled by the Azerbaijani authorities. The second, third and fourth applicants also applied for asylum in Azerbaijan. As regards the first applicant, an asylum application was lodged on his behalf with the UNHCR Baku Office, the SMS, the OCD and the State Committee for Affairs of Refugees and Internally Displaced Persons, asking them to grant the first applicant refugee status owing to the risk of his being subjected to persecution and ill treatment in Turkey; on the same day the UNHCR Baku Office issued a temporary protection letter with respect to the first applicant, his wife and their four children, valid until 7 September 2017, on the basis that they were registered with the UNHCR and their asylum request was under consideration by the national authorities. *Relevant complaints:* 1. The applicants' detention and deportation to Turkey in circumvention of extradition proceedings had been contrary to domestic law and had amounted to extrajudicial rendition. Their detention had been unlawful and contrary to Article 5§1 of the Convention. 2. The applicants' forcible removal to Turkey was in breach of Article 3 of the Convention, given the real risk of ill-treatment to which they would be subjected there. *Court's conclusions:* 1. The whole period of detention of the first applicant and various periods of detention of the second, third and fourth applicants by the Azerbaijani authorities were not based on a formal decision authorising their detention as required by the domestic law and were accordingly unlawful within the meaning of Article 5§1 of the Convention. The applicants were removed from Azerbaijan to

	Turkey in circumvention of formal extradition proceedings and of the relevant international safeguards which such proceedings entail. In particular, the first applicant was removed from Azerbaijan in the absence of any formal extradition proceedings and the other applicants could not benefit from the protection afforded by such proceedings. In that connection, the Court cannot overlook the fact that the third and fourth applicants were removed to Turkey while their extradition proceedings were still pending and that the second applicant was removed to Turkey despite the Baku Court of Serious Crimes' decision of 12 July 2018, holding that he should not be extradited to Turkey. In these circumstances, the Court cannot but conclude that the removal of the applicants was in fact a disguised extradition from Azerbaijan to Turkey and their deprivation of liberty had been part of an extra-legal transfer of persons which circumvented all guarantees offered to them by domestic and international law. *[paras. 105 and 106]* 2. At no point in the domestic proceedings did the national authorities examine the applicants' fears of ill-treatment if returned to Turkey, while the decision to remove them from Azerbaijan based on the cancellation of their passport or residence permits was nothing but a pretext for an extradition in disguise, thus placing them outside the protection of the law. The haste with which the applicants were removed from Azerbaijan on the basis of the cancellation of their passport or residence permits deprived them of any possibility to challenge their removal on those grounds before the competent courts. In these circumstances, the applicants were denied effective guarantees of protection against arbitrary refoulement. The respondent State had failed to discharge its procedural obligation under Article 3 of the Convention to assess the risks of treatment contrary to that provision before removing the applicants from Azerbaijan. *[paras. 114 through 116]*
T.K. and Others v. Lithuania No.: 55978/20 Type: Judgment Date: 22 March 2022 Articles: Y: 3 Keywords: – expulsion – ill-treatment Links: English only Translations: Lithuanian	*Circumstances:* Expulsion of six Tajik nationals, failed asylum seekers, from Lithuania to Tajikistan. Interim measure complied with. *Relevant complaint:* If they were removed to Tajikistan, the first applicant would face a real risk of being subjected to torture, degrading or inhuman treatment or punishment as a result of his membership in the Islamic Renaissance Party of Tajikistan ("IRPT"), whereas the other applicants would be at risk of ill-treatment by the authorities on the grounds of their family links with him. The applicants disputed the conclusion reached by the domestic authorities that only the leaders or active members of the IRPT were persecuted in Tajikistan. They argued that up-to-date information from various reliable sources indicated that even former or non-active members of the IRPT were at risk of torture and other forms of ill treatment. The Lithuanian authorities had failed to properly consider the documents which the applicants had submitted and the available country-of-origin information. According to the applicants, the

	authorities had required them to present indisputable evidence that they would be at risk of ill-treatment, such as the issuance of wanted notices, arrest warrants, indictments, or evidence of past ill-treatment or torture. However, such a requirement was not in conformity with the well-established practice of the Court; moreover, it was impossible in practice and had imposed a disproportionate burden on them. *Court's conclusions:* The reports describing the general situation in Tajikistan do not lead to the conclusion that the situation there, as it stands, is such that the removal of any Tajik national to the country would contravene Article 3 of the Convention. The Court has no grounds to question the conclusion reached by the Lithuanian authorities that the applicants did not present a credible and consistent account of past threats or persecution. Nonetheless, even when some of an applicant's statements are found not to be credible, that does not necessarily constitute grounds to doubt his or her overall credibility, or to dismiss all of his or her statements. While past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor. The fact that it has not been credibly established that the applicants were ill-treated or threatened in their country of origin in the past is not decisive for the Court when assessing whether there is a real risk of them being subjected to ill-treatment in the event of their removal. According to the most recent reports from various reputable sources, the harassment and persecution of political opponents and their families in Tajikistan remain widespread, and there are no grounds to believe that the situation in the country might be improving. While reputable sources do not explicitly state that any person with any links to the IRPT, however remote, would necessarily be at risk of persecution, they do describe the widespread harassment of political opponents and contain reports of hundreds of members of banned political parties being arbitrarily detained and imprisoned on politically motivated charges, as well as of thousands being included in international search lists. Another source also reported on the arrests of hundreds of opposition supporters. In addition, there are some accounts of politically motivated arrests of both former members of the IRPT and of individuals with only tenuous links to the political opposition, such as individuals who had provided help to families of political prisoners or who had "liked" and shared opposition-related material on social media. In the Court's view, the available information does not lead to an unequivocal conclusion that only leaders and high-ranking members of the IRPT are singled out for persecution by the Tajik authorities, and that so-called "ordinary members" are safe from risk. While the authors of the international reports and other publications may prefer, for various reasons, to draw attention to the fate of particularly prominent individuals, that in itself neither confirms nor denies the existence of any ill treatment of persons falling under other categories. The existence of a practice of ill-treatment of ordinary party members was at the core of the applicants'

	asylum claims. According to the relevant UNHCR guidelines and under the domestic law, information about the treatment in the country of origin of persons who are in a similar situation to the applicants is one of the factors to be considered when assessing whether an applicant's fear of persecution can be considered well-founded. Taking into account the fact that the available country-of-origin information did not lead to an unequivocal conclusion as to the existence of a practice of ill-treatment of ordinary IRPT members, the Court finds it particularly disconcerting that the domestic authorities failed to assess the information provided by the applicants, and even explicitly told the first applicant to refrain from supplying it. Accordingly, the Court finds that the Lithuanian authorities did not carry out an adequate assessment of the existence in Tajikistan of the practice of ill-treatment of persons who were in a similar situation to the applicants. Instead, they focused on the lack of any past threats or persecution directed against the applicants, or the lack of other special distinguishing features, which is not in line with the approach established in the Court's case-law. *[paras. 73, 80 through 83, 85, 88 and 89]*
N.K. v. Russia No.: 45761/18 Type: Judgment Date: 29 March 2022 Articles: Y: 3, 5§4, 34 Keywords: – expulsion – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Expulsion of a Tajik national, charged in absentia with a crime of membership of an extremist organisation by the Tajik authorities, from Russia to Tajikistan, in breach of an interim measure issued by the Court. *Relevant complaint:* The applicant initially complained under Article 3 of the Convention that that the national authorities had failed to consider his claims that he risked ill- treatment in the event of his removal to Tajikistan, and that if removal were to take place it would expose him to that risk. *Court's conclusions:* In so far as the applicant's complaint concerned the risk of ill-treatment that he ran in Tajikistan, the present case is identical to cases in which the Court previously established that individuals whose extradition was sought by Tajik authorities on charges of religiously or politically motivated crimes constituted a vulnerable group facing a real risk of treatment contrary to Article 3 of the Convention in the event of their removal to Tajikistan. Furthermore, given the nature of the charges against the applicant, the manner in which the indictment was issued against him and perfunctory judicial review of his allegations by the domestic courts, the Court finds no reason to depart from its earlier findings in similar cases and concludes that at the time of his alleged removal for Tajikistan a real risk had existed that the applicant would be subjected in Tajikistan to treatment proscribed by Article 3 of the Convention. The Court has already pointed out recurring failures of the Russian Government to comply with an interim measure indicated under Rule 39 of the Rules of Court in cases of applicants whose extradition was sought on extremism or terrorism related crimes in Uzbekistan and Tajikistan and who disappeared or were illegally transferred there. Having regard to the repetitive pattern of disappearances of applicants in similar circumstances and taking into account the applicant's

	background, the Court is satisfied that the Russian authorities were aware that the applicant could face a forcible transfer to the country where he could be subjected to torture or ill-treatment and that relevant measures of protection should have been taken by them. However, even though the Government claimed that the relevant State bodies were duly alerted by the Ministry of Justice about the application of interim measure by the Court in respect of the applicant, no evidence was submitted by the Government that such notification was in fact taken into account and that the relevant steps were taken in view of the precarious situation of the applicant. Furthermore, where, as in the present case, the authorities of a State party are informed of illegal transfer of a person from Russia, they have an obligation under the Convention to conduct an effective investigation. However, no attempt was made to carry out investigation into the applicant's alleged abduction. The Court is satisfied that the applicant has been subject of an illegal forcible transfer by unidentified persons with the passive or active involvement of State agents. Given the circumstances of the present case, the Russian Government had not complied with an indication of an interim measure and nothing had objectively impeded that compliance. *[paras. 5 and 7 through 9]*
M.A.M. v. Switzerland No.: 29836/20 Type: Judgment Date: 26 April 2022 Articles: Y: 2, 3 Keywords: – expulsion – ill-treatment Links: French only Translations: not available	*Circumstances:* Deportation to Pakistan of a Pakistani asylum seeker who converted from Islam to Christianity in Switzerland. *Relevant complaint:* The applicant's return to Pakistan would expose him to a real risk of treatment contrary to Articles 2 and 3 of the Convention as Christians in Pakistan are at risk of persecution, with numerous violent attacks frequently resulting in death according to international reports. While conversion is not legally prohibited in Pakistan, apostasy is a crime under Islamic law. In addition, converts there are exposed to a particularly high risk of being accused of blasphemy, a criminal offense punishable by death, which can be commuted to a life sentence limited to twenty-five years. If the applicant were to return to Pakistan, he would be forced to change his habits of expressing his Christian faith and confine it to the purely private sphere. He would thus have to live a lie and could be forced to renounce all contact with other people of his faith. The concealment and daily denial of his beliefs in the context of Pakistani society could be qualified as unbearable psychological pressure, constituting torture within the meaning of Article 3 of the Convention. *Court's conclusions:* On 28 February 2017 the asylum authorities had become aware that the applicant regularly participated in the activities of the Salvation Army, in particular worship services. However, they failed to react and to ask the applicant questions on this subject, even though he was not represented by a lawyer. Having regard to the absolute nature of the right guaranteed by Article 3 of the Convention, and to the situation of vulnerability in which asylum seekers often find themselves, if a Contracting State

	is informed of facts, relating to a given individual, to expose the latter to a risk of ill-treatment contrary to the said provision in the event of return to the country in question, the obligations for States arising from Article 3 of the Convention imply that the authorities assess this risk *ex officio*. In view of the international reports of serious human rights violations in Pakistan against converted Christians such as the applicant, the Court considers that the Federal Administrative Court should have taken these factors into account in establishing its conclusions as to the general situation of Christians and Christian converts in Pakistan. The Federal Administrative Court carried out an in-depth examination of the situation of Christians in Pakistan, but not sufficiently in-depth of the situation of converts to Christianity and of the applicant's personal situation concerning his conversion, the seriousness of his convictions, his way of manifesting his Christian faith in Switzerland, the way he intended to manifest it in Pakistan if the removal decision were implemented, the knowledge of his conversion by his family and his vulnerability to persecution and accusations of blasphemy. The Swiss authorities therefore did not sufficiently assess the risk that the applicant would run, as a result of his conversion, if he returned to Pakistan. *[paras. 65, 76 and 78]*
Khasanov and Rakhmanov v. Russia Nos.: 28492/15 & 49975/15 Type: Judgment [GC] Date: 29 April 2022 Articles: N: 3 Keywords: – extradition (grounds for refusal) – ill-treatment Links: English, French Translations: not available	*Circumstances:* Extradition of ethnic Uzbeks, failed asylum seekers, from Russia to Kyrgyzstan for the purposes of prosecution for aggravated misappropriation of money (first applicant) and certain violent crimes (second applicant). Interim measure complied with. *Relevant complaint:* In the event of their removal to Kyrgyzstan, the applicants would face a real risk of treatment contrary to Article 3 of Convention because they belonged to the Uzbek ethnic minority. The applicants maintained that they had not been prosecuted for acts of a "common criminal nature" and their prosecutions had been ethnically motivated and related to the June 2010 events. Despite the relevant claims having been raised before the Russian authorities, they had been dismissed without sufficient reasons being given. The risk to ethnic Uzbeks prosecuted in Kyrgyzstan had long been recognised by the Court and that irrespective of the nature of the charges, they would be exposed to abuse on the sole basis of ethnicity. *Court's conclusions:* Despite expressing concern about repeated incidents of ill-treatment in Kyrgyzstan, the Court has never found a sufficient basis to conclude that the general situation was such as to preclude all removals to that country. The available international material does not support a finding that the general situation in the country has either deteriorated as compared to the previous assessments, which did not lead the Court to reach findings precluding all removals to Kyrgyzstan, or has reached a level calling for a total ban on extraditions to that country. The Court has concluded in a number of judgments concerning the extradition to Kyrgyzstan of ethnic Uzbeks that they faced a real risk of ill-treatment as

	a consequence of their ethnic origin As regards the current situation, the Court notes the absence of specific reporting on ethnicity-based torture of ethnic Uzbeks, as opposed to other ethnicity-based risks, such as insecurity, discrimination with respect to economic and security matters, ethnic profiling and political marginalisation. While in the aftermath of the ethnic clashes of June 2010 there was specific evidence indicating that ethnic Uzbeks were at a heightened risk of ill-treatment, the recent reports no longer contain such indications. Consequently, the Court has no basis for reaching a conclusion that ethnic Uzbeks constitute a group which is still systematically exposed to ill treatment. As regards the misappropriation charges brought against the first applicant, no solid evidence has been presented in support of the alleged ethnic bias underlying them. The first applicant, for his part, argued that the criminal proceedings had not been initiated against him until 2010 and were in fact a strategy used against ethnic Uzbeks in order to force them to pay bribes and to extort their property. However, those assertions are not supported by any specific and concrete facts, apart from the reference to the time of the opening of the criminal investigation and the inference the Court is being invited to draw therefrom. Given that none of the applicant's own assertions are supported by any evidence and do not reach beyond the level of speculation, no existence of a real individual risk of ill treatment can be reliably demonstrated in his case. In respect of the second applicant, the charges against him concern aggravated violent crimes motivated by ethnic hatred in the course of the June 2010 events. However, the mere fact that the applicant has been prosecuted for allegedly ethnically profiling his victims and exerting violence against persons of Kyrgyz ethnicity in the context of inter-ethnic clashes does not automatically mean that he is himself a victim of ethnic persecution or bias. His assertion that the criminal case against him was fabricated or that the accusation of ethnic hatred towards the Kyrgyz part of the population exposed him to prejudice capable of turning into ill-treatment requires separate and proper substantiation. Given that the second applicant has failed to substantiate his allegations beyond ascertaining that he had been charged with hate crimes against ethnic Kyrgyz or to reasonably account for his repeated travel to and from Kyrgyzstan after June 2010 and his obtaining a new passport there several months after arriving in Russia, no existence of a real individual risk of ill-treatment can be reliably demonstrated in his case. As far as individual circumstances are concerned, the burden of proof lies on the applicant to adduce, to the greatest extent practically possible, material and information allowing the authorities of the Contracting State concerned, as well as the Court, to assess the risk his or her removal may entail. The Russian courts had had engaged with their Convention obligations by carefully and appropriately examining the existence of the individual risks capable of preventing the applicants' extradition. Both of the applicants in the present case have failed to demonstrate to the domestic courts, the Chamber or the Grand Chamber

	the existence of ulterior political or ethnic motives behind their prosecution in Kyrgyzstan or further special distinguishing features which would expose them to a real risk of ill-treatment. *[paras. 120, 126, 129, 132 and 134 through 136]*
M.N. and Others v. Turkey No. 40462/16 Type: Judgment Date: 21 June 2022 Articles: N: 3 Keywords: – expulsion – ill-treatment Links: French only Translations: Turkish	*Circumstances:* Expulsion of nationals of Tajikistan, arrested in a Quranic school in Istanbul, from Turkey to Tajikistan. *Relevant complaint:* The applicants' arrest was reported by the press under the title "Large-scale operation against the Islamic State", and thus they became the targets of the intelligence services of Tajikistan. Following the announcement of the arrest, officials from the Tajikistan consulate immediately went to the Kumkapı repatriation center where the applicants were detained, and reportedly collected information about them. People who received religious education abroad, except in places specified by the Government, were subjected to cruel treatment in Tajikistan. Because they were described as terrorists by the press, the applicants would be subjected to imprisonment, torture, inhuman or degrading treatment or punishment if they were expelled to Tajikistan. *Court's conclusions:* The decisions of the Istanbul Administrative Court of 28 April 2016, according to which even in the event that the applicants risked being persecuted in Tajikistan, they could not rely on right to non-refoulement to that country because they presented a threat to public security in Turkey, are not compatible with the case-law of the Court. The applicants did not refer to any political activity which they had carried out in Tajikistan before coming to Turkey and which was considered by the authorities of that country to be illegal. Moreover, the applicants do not allege that they were members of a movement or organization deemed to be illegal or protesting in Tajikistan. The applicants also do not refer to any criminal investigation directed against them in Tajikistan. It does not appear from the file that the authorities of Tajikistan issued wanted notices against them for any illegal activity carried out in Tajikistan. Nor had those authorities sought to force or threaten the applicants to return to Tajikistan. There is nothing in the file to indicate that the applicants had any difficulty in obtaining their passports in Tajikistan. They were able to leave their country regularly and traveled to Turkey with an ordinary entry visa. The applicants' allegations about the problems they had encountered in their country of origin before coming to Turkey were that they could not do Quranic studies at will. However, the reports of international organizations do not indicate any persecution originating from Quranic courses given to adults, provided that the establishments concerned have no connections with Islamic extremist groups. Consequently, the applicants have not succeeded in establishing that they would run a risk of being persecuted, if they returned to Tajikistan, on account of any political or social activity in which they would have engaged in their country of origin. As regards the media coverage of the applicants' arrest

	in an unregistered Quranic school, the Court observes that certain media presented the operation and the searches carried out by the Istanbul police in this school as an action targeting circles believed to be close to the Islamic State. However, during these media campaigns, use was made, not only of sensational headlines, but also of very general terms referring to an approximate number of adults and minors who had been present and had been apprehended by the police. The names or identities of the applicants were not mentioned. As regards the fact that officials from the Tajikistan consulate in Istanbul went to the detention center in order to speak with the applicants and inquire about their situation, the Court recalls that it is due duty of consulate officials to intervene on behalf of nationals of their country when the latter are deprived of their liberty by the authorities of the host State. Even if said agents had been informed of the allegations in the newspapers according to which the persons arrested were close to the Islamic State, the Court considers that the applicants were able to explain to the agents of the consulate that they were simply students in these Quranic courses, as they did in front of the Turkish authorities. *[paras. 43, 47, 48 through 50, 53 and 55]*
Alleleh and Others v. Norway No. 569/20 Type: Judgment Date: 23 June 2022 Articles: N: 8 Keywords: – expulsion – family life (separation of family) Links: English only Translations: German	*Circumstances:* Expulsion of a Djiboutian national from Norway to Djibouti with a two-year re-entry ban. The applicant originally arrived to Norway and applied for aylum, providing Norwegian authorities with false information; the request for asylum was, therefore, denied. The applicant was later granted Norwegian nationality but it was revoked because the applicant provided the Norwegian authorities with false information as well. In the meantime, the applicant married a Norwegian national and had four children (all Norwegian nationals) with him. *Relevant complaint:* The expulsion of the first applicant with a two-year ban on re-entry entailed a breach of the family members' right to respect for their family life. There were insurmountable obstacles that prevented the family from continuing their family life together in Djibouti. The second applicant would be unable to provide adequate care for the children if he remained with them in Norway as the sole carer. In the instant case, extraordinary circumstances warranted that the expulsion of the first applicant be considered disproportionate. *Court's conclusions:* The facts with regard to what impact an expulsion would have on the children had been established by way of a thorough process where an expert had been engaged and the children's views obtained in so far as possible based on their age and maturity. The factual findings on that point had also been set out in detail by the Borgarting High Court in its judgment, providing a basis for the Supreme Court in its application of the law. The Supreme Court stressed various aspects that mitigated the effects of the expulsion on the children. First of all, it was only out of consideration for the children that the ban on re-entry imposed on the first applicant had been limited to two years in the first place.

	The duration of the exclusion order is an important element in the proportionality assessment. The Court finds reasons to stress not only the importance of the fact that the ban from re-entry had been limited to two years, but that it proceeds on the basis that she will be allowed to resume her family life in Norway when the two years have passed. *[paras. 101, 103 and 104]*
W v. France No. 1348/21 Type: Judgment Date: 30 August 2022 Articles: Y: 3 Keywords: – expulsion – ill-treatment Links: French only Translations: not available	*Circumstances:* Expulsion of a Russian national of Chechen origin from France to Russia after revocation of the applicant's asylum status. Applicant suspected by French authorities of radicalization and of belonging to the Chechen armed resistance, and reported as such to the Russian authorities. *Relevant complaint:* The aplicant's expulsion to Russia would expose him to treatment contrary to Article 3 of the Convention. The applicant referred on the one hand the summonses received in his name to appear before the police forces in Grozny and to the transmission to the Russian authorities of the request for a consular laissez-passer, which prove the persistent interest of the authorities in his regard. On the other hand, the applicant's fear was based on the knowledge of the Russian and Chechen authorities of the reasons for his expulsion, namely the accusations and suspicions against him of links with a terrorist organisation. *Court's conclusions:* Although serious human rights violations were reported in Chechnya, the situation was not such that any return to the Russian Federation would constitute a violation of Article 3 of the Convention. Even though it appears from international reports that certain categories of the population may be particularly at risk, the Court is not of the opinion that these are groups systematically exposed to treatment contrary to Article 3 of the Convention. Since the recognition of the applicant's refugee status in 2007, he has traveled on at least two occasions to the Russian Federation without being disturbed, including once in the region of North Ossetia, neighboring Chechnya. In addition, he obtained an external Russian passport with which he traveled to Turkey while he had the possibility of obtaining a travel document for refugees in France. It is clear from the 2015 OFPRA termination decision, subsequently confirmed by the CNDA, that the applicant's status as a refugee ceased to be recognized, the applicant having voluntarily claimed protection from the Russian authorities after his refugee status was recognized. During the steps taken to return the applicant, the French authorities were in direct contact with the Russian authorities and transmitted to them, in addition to the readmission application, the file concerning the applicant, including detailed information on his situation. It is in particular a document indicating the applicant's membership of the Chechen radical Islamist movement, his past as a fighter within a Chechen terrorist organization, as well as his commitment to the benefit of the international jihad. This information was accompanied by reports from the French police concerning the applicant's summons to a hearing. The applicant also tendered into the file two summonses in his name

	issued a few days later as well as testimonies from his close family in the Chechen Republic explaining that the applicant was wanted and that the Russian security forces often visited them to ask them questions about him. In view of these elements, from their temporal sequence and also of what reliable international sources show that arbitrary detention and torture continue to occur in the Russian Federation and in particular in the Chechen Republic in cases concerning people suspected of terrorism, the Court considers that the applicant has shown that there are serious reasons to think that, if returned to the Russian federation, he would be exposed to treatment contrary to Article 3 of the Convention. *[paras. 68, 70, 73, 74, 78 and 79]*
Gilanov v. the Republic of Moldova No. 44719/10 Type: Judgment Date: 13 September 2022 Articles: Y: 5§3, 5§4; N: 5§1; inadmissible: 5§1 Keywords: – custody (length) – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition of a Georgian national from Belarus to the Republic of Moldova for the purposes of prosecution for fraud. *Relevant complaints:* 1. The applicant's detention in Belarus was unlawful after the expiry of 30 days from his arrest, as provided by the warrant for his arrest issued in the Republic of Moldova. 2. At the time of the applicant's arrest in Belarus, Article 195 of the Criminal Code of the Republic of Moldova, on which the Moldovan court had relied when ordering his arrest, had already been excluded from the Code. Thus, his detention had had no legal basis. 3. The applicant had not been informed promptly of the reasons for his arrest and of the existence of a criminal investigation against him. *Court's conclusions:* 1. By ordering the applicant's detention on remand and setting in motion a request for the applicant's extradition, the responsibility lay with Moldova to ensure that the detention order issued by the Buiucani District Court complied with the requirements of Article 5 of the Convention. Within the framework of an extradition procedure, a requested State should be able to presume the validity of the legal documents issued by the requesting State and on the basis of which a deprivation of liberty is requested. The country requesting extradition must ensure that the request for detention and extradition is lawful, not only under national law, but also under the Convention. Accordingly, the act complained of by the applicant, having been instigated by the Republic of Moldova on the basis of its own domestic law and followed-up by Belarus in response to its international obligations, must be attributed to the Republic of Moldova notwithstanding that the act was executed in Belarus. A bilateral or international treaty, being part of the domestic legal order, is capable of serving as a legal basis for extradition proceedings and for detention with a view to extradition. The domestic court order for the applicant's arrest mentioned its validity for 30 days from the date of arrest. In the

	applicant's view, this implies that it expired one month after he was deprived of his liberty in Belarus. The Government submitted that the usual practice of the courts was to take the date of effective detention by the Moldovan authorities as the beginning of detention sanctioned by a detention order issued by a Moldovan court, regardless of the length of extradition procedures. It is in the first place for the national authorities to interpret and apply domestic law. While the Chişinău Court of Appeal did not provide elaborate reasoning when it rejected the applicant's appeal, by maintaining the District Court's decision ordering the applicant's detention for 30 days it implicitly upheld the continuing validity of the arrest warrant. The Government's interpretation of the meaning of the word arrest, as implicitly supported by the Chişinău Court of Appeal's decision in the present case, is both reasonable and practical. It takes into account the particular difficulty for the domestic courts – before being able directly to question the person – to verify such elements as "the character of the person involved, his or her morals, assets, links with the State in which he or she is being prosecuted and the person's international contacts". To accept the applicant's position would also mean that the Moldovan courts would have to extend the arrest warrant – again without ever seeing the person involved – at regular intervals. Moreover, since under Moldovan law a person can only be held in detention pending trial for a maximum of 12 months, in the case of any extradition process exceeding that period, the Moldovan authorities would have to ask the authorities of the State in which the person is detained pending extradition to release him, without the courts ever having the possibility of questioning him. Therefore, the arrest warrant constituted, from the point of view of Moldovan law, a sufficient basis for effecting the applicant's arrest and detention in Belarus for the purpose of extradition, and it continued to provide such a basis until the applicant was handed over to the Moldovan authorities, at which point the 30-day period began to run. It was only after the Moldovan authorities had the applicant under their control that they could assume the full spectrum of obligations towards him in the context of his pre-trial detention under Article 5§1(c) of the Convention, including those provided for in paragraphs 3 and 4 of Article 5 (notwithstanding the fact that the applicant was in fact able to take proceedings within the meaning of paragraph 4 to contest the detention order while he was still in Belarus). Accordingly, the practice of the domestic courts to count the period of "detention" as starting from the moment when a person is deprived of liberty by the domestic authorities – i.e. from the moment of extradition in the present case – is consistent with the requirements of Article 5§1 of the Convention. *[paras. 42, 43, 50, 52 through 56]* 2. The Court considers that this complaint could raise an issue only if the offence was no longer provided for in the Criminal Code while the applicant was being detained. The mere fact that certain

	provisions of the Criminal Code were moved from one section to another does not call into question the finding that, throughout his detention, the applicant was accused of having committed the same offence, which continued to exist in the Criminal Code. *[para. 60]* 3. The applicant's arguments expressly focused on the period between the issuing of the warrant for his arrest and his arrest in Belarus. However, during that time his whereabouts remained unknown to the Moldovan authorities and he could therefore not be informed of the reasons set out in the arrest warrant. After his arrest, the applicant was informed of the reasons for his arrest, his lawyer having made a detailed appeal against his detention order. *[para. 62]*
Beverly McCallum v. Italy No. 20863/21 Type: Decision [GC] Date: 21 September 2022 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English, French Translations: not available	*Circumstances:* Extradition of an American national from Italy to the United States of America for the purposes of prosecution for murder of her husband. Following the Italian authorities' decision to grant the extradition but before the applicant was extradited, the requesting State informed the Italian authorities by a Diplomatic Note that the charges against her were reduced from first-degree murder to second-degree and the she was no not be tried for conspiracy. Her extradition for the amended charges was again granted by the Italian authorities. *Relevant complaint:* The risk of the applicant spending the remainder of her life in prison without eligibility for parole had not been eliminated, since the prosecutor had not given a binding commitment to pursue the lesser charge against her. The content of the Diplomatic Note was not sufficient to exclude the risk of the more serious charges being brought against her following her extradition. The assurance received was legally dubious and indicative of the unreliable and unpredictable nature of the judicial system in the United States of America. The extradition treaty between the two States would not prevent the Michigan prosecutor from reverting to the more serious charges, and the applicant doubted that the Italian authorities would protest if this happened. Therefore, no sufficient guarantee had been received to eliminate the risk of an irreducible life sentence being imposed on the applicant if convicted. Even if tried and convicted on the reduced charge, her eventual release on parole would still depend on the decision of the Governor of Michigan, having regard to the very broad power of executive clemency conferred by the Michigan Constitution. The Governor's power of commutation was not limited to prisoners excluded from parole. As shown by the available official statistics, clemency had been granted to prisoners convicted of second-degree murder (and many other types of crime). The discretionary and opaque nature of this process was clearly incompatible with the relevant Convention standards. Moreover, no assurances had been given in relation to how the Governor would deal with a petition for clemency from the applicant.

	Court's conclusions: As for the reliability of the Diplomatic Note, the Court's conclusions in Harkins and Edwards v. the United Kingdom are fully applicable to the present case. If, following the applicant's extradition, the original charges against the applicant were to be revived, that would not be compatible with the duty of good faith performance of treaty obligations (see Article 26 of the Vienna Convention on the Law of Treaties). Accordingly, the Court considers it justified to proceed on the basis that the applicant can now only be tried on the charges indicated in the Diplomatic Note and specified in the new extradition decree of the Italian authorities. Consequently, if convicted of these charges, she faces at most the prospect of life imprisonment with eligibility for parole. The Court further notes the statement of the Italian Government at the hearing that, as the other party to the extradition treaty between the two States, it regards the note as a binding representation on the part of the Government of the United States. The role of the Governor of Michigan in the parole system in that State cannot be regarded as pertaining to the essence of the Vinter and others v. United Kingdom safeguard, but rather is more in the nature of a procedural guarantee. As provided in Michigan Compiled Laws, a prisoner's release on parole is at the discretion of the parole board. While the Governor of Michigan indeed enjoys a broad power of executive clemency, he or she is not involved in the parole procedure. Nor do the relevant legal provisions empower the Governor to overrule the grant of parole to a prisoner. As indicated above, appeal against the grant of parole lies to the competent circuit court. *[paras. 51 through 54]*
Liu v. Poland No. 37610/18 Type: Judgment Date: 6 October 2022 Articles: Y: 3, 5§1 Keywords: – assurances – custody (length) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Extradition of a Taiwanese resident from Poland to the People's Republic of China for the purposes of prosecution for fraud on a grand scale. The applicant was arrested in Poland within the context of an international Chinese-Spanish investigation concerning a vast international telecoms fraud syndicate. Interim measure complied with. *Relevant complaints:* 1. The applicant's extradition would put him at risk of being subjected to torture and inhuman or degrading treatment or punishment, as the People's Republic of China was notorious for gross human rights violations – not to mention the widespread persecution of persons reporting instances of such abuse. The applicant also stated that the Government were unable to exclude the possibility that his extradition to China would result in a violation of Article 3 of the Convention, having acknowledged the occurrence of certain instances of gross human rights violations in that country. The domestic authorities had also failed to consider properly the political context of the case (in the light of the applicant's Taiwanese origin). Referring to the fact that the Government had not asked for any diplomatic assurances and were content to accept informal guarantees from the Chinese authorities that the applicant would be detained at the Boluo Deportation Centre, where (according to those

	authorities) his human rights would be respected, the applicant stated that such informal statements could not be considered sufficient. 2. The Polish authorities had not acted with due diligence, as the applicant had been detained for over three years and the domestic authorities had failed to act more expeditiously. The proceedings could have been conducted more speedily and the applicant had not contributed to any delays. The application of the interim measure by the Court had not meant that the applicant had to be kept in detention, and that ordering his prolonged detention had been solely the responsibility of the domestic authorities. *Court's conclusions:* 1. Some of the reports on the situation in China referred to above dates back several years. However, due to the apparently limited cooperation of the Chinese government with international human rights' protection bodies, the Court must rely on the country material available to it, including – in the absence of other evidence furnished by the Government – reports issued by international and domestic governmental and non-governmental organisations. The People's Republic of China has signed but not ratified the International Covenant on Civil and Political Rights (ICCPR). Consequently, under both customary international law and Article 18 of the Vienna Convention on the Law of Treaties, its obligations are limited to refraining from acts that would defeat the object and purpose of that Covenant. The Chinese government is thus exempted from the reporting system of the United Nations Human Rights Committee (HRC), and individuals may not complain to the HRC about alleged violations of those of their rights that are protected by the ICCPR. The People's Republic of China ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; however, it is not a party to the Optional Protocol to it, which established an individual complaint mechanism. Moreover, upon ratifying that Convention, the People's Republic of China declared that it did not recognise the authority – as provided by Article 20 thereof – of the CAT to perform an inquiry. In consequence, it is not possible for individuals who allege that their basic human rights have been breached to have recourse to any independent international protection mechanism, or for any independent international body to perform an onsite inquiry in the People's Republic of China without the latter's invitation. Despite certain improvements in the Chinese domestic legislation regarding the prohibition and prevention of torture, several significant shortcomings remain in place. Notwithstanding the fact that serious allegations of widespread use of torture and inhuman and degrading treatment in Chinese detention centres continue to be raised, statistical data pertaining to such events are being withheld by the Chinese authorities and treated as

	State secrets, making their scale impossible to ascertain. It is thus unclear whether the system of supervision of detention facilities by prosecutors is effective and whether it provides sufficient guarantees of protection against ill-treatment. Where there are many significant shortcomings in the domestic legislation in the country of destination and allegations of serious abuses identified in independent reports, coming from numerous sources, the benefit of the doubt should be granted to an individual seeking protection. According to the Chinese authorities, the applicant, following his extradition, would be held at a facility where all his basic rights would be guaranteed and that detention centres were open to the public and journalists, so that they could see the conditions prevailing in them. The Court finds this argument unconvincing. In the light of information contained in reports issued by the CAT, it seems highly unlikely that members of the public or journalists would be allowed entry to a Chinese detention facility. In any event, no evidence confirming that claim has been furnished by the Government or mentioned by the domestic courts, apart from informal guarantees presented by the Chinese authorities. Nor was there any information available about the actual conditions of detention in the Boluo Detention Centre. The Government obtained only informal declarations from the Chinese authorities that the applicant's human rights would be respected but it did not seek any diplomatic assurances such as would allow the Court to evaluate whether such assurances would offer in practice a sufficient guarantee that the applicant would be protected against the risk of ill treatment. The extent to which torture and other forms of ill-treatment are credibly and consistently reported to be used in Chinese detention facilities and penitentiaries, may be equated to the existence of a general situation of violence. Thereby the applicant is relieved from showing specific personal grounds of fear, it being enough that it is established that, upon extradition, he will be placed in a detention centre or penitentiary. Since it is uncontested that the applicant would be detained in China if the extradition order was implemented, the Court finds it established that the applicant would face a real risk of ill-treatment if extradited to that State. *[paras. 74 through 78 and 80 through 83]* 2. If extradition proceedings are still in progress, the fact that an interim measure has been indicated cannot absolve the respondent Government from its obligation to conduct those proceedings with the same proper diligence as all extradition proceedings entailing detention under Article 5§1(f) of the Convention. The extradition proceedings in the applicant's case were not stayed owing to the interim measure indicated by the Court. On the contrary, when the measure was applied, the Commissioner for Human Rights had already requested the applicant's case file in order to be able to consider the possibility of lodging a cassation appeal on behalf of the applicant. Such a cassation appeal was

	lodged almost eight months later, on 7 May 2019. The Supreme Court held a hearing in the applicant's case and delivered its judgment on 1 October 2020 (that is to say, after a year and four months). Consequently, the Government's argument that the applicant's detention after 12 September 2018 was mainly attributable to the interim measure indicated by the Court under Rule 39 is unfounded. The final judgment of the Supreme Court was delivered two years after the interim measure had been indicated. At the time of the Supreme Court's judgment, the applicant had already been detained for a considerable period of time (namely, three years and two months). In the light of the foregoing, the the domestic authorities failed to act with due diligence and to ensure that the length of the applicant's detention did not exceed the time that could be reasonably required for the purpose pursued. *[paras. 101 through 103]*
Sanchez-Sanchez v. the United Kingdom No. 22854/20 Type: Judgment [GC] Date: 3 November 2022 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English, French Translations: Croatian	*Circumstances:* Extradition of a Mexican national from the United Kingdom to the United States of America for the purposes of prosecution for drug-trafficking offences. *Relevant complaint:* The applicant's extradition to the United States of America would be in breach of Article 3 of the Convention due to the risk of receiving a whole life sentence without the possibility for parole. The applicant referred to the Court's conclusions in Trabelsi v. Belgium. *Court's conclusions:* In the case of an extradition, a Contracting State finds itself under an obligation to cooperate in international criminal matters. However, that obligation is subject to the same State's obligation to respect the absolute nature of the prohibition under Article 3 of the Convention. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the destination country. In doing so, it must inevitably assess the situation in the requesting country in terms of the requirements of Article 3 of the Convention. This does not, however, involve making the Convention an instrument governing the actions of States not Parties to it or requiring Contracting States to impose standards on such States. In so far as any liability under the Convention is or may be incurred, it is incurred by the extraditing Contracting State by reason of its having taken action which has the direct consequence of exposing an individual to proscribed ill-treatment. In cases where the alleged risk in the requesting country was the possible imposition of a sentence of imprisonment of life without parole, the Court, prior to Vinter and others v. United Kingdom, held that an Article 3 issue would arise only when it could be shown either that the applicant was at a real risk of receiving a grossly disproportionate sentence in the requesting State, or that, if a time came when his or her continued imprisonment could no longer be justified on any legitimate penological grounds, the life sentence would be irreducible de facto and de jure (see Harkins and Edwards v. United Kingdom). Thus, the risk of serving a life sentence that had lost any penological justification had to be

	shown by the applicant at the moment of the impugned extradition, it being understood that the point at which the applicant's continued incarceration would no longer serve any purpose may never arise. In Vinter and others v. United Kingdom the Court, in relation to whole life orders in the domestic context, held that the penological justification for a life sentence had to be subject to review after the passage of a certain period of time. Subsequently, in Trabelsi v. Belgium, the Court applied the Vinter and others v. United Kingdom criteria to the extradition context, and found that the applicant's extradition would violate Article 3 of the Convention because none of the procedures provided for in the requesting State amounted to a review mechanism requiring the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, he had changed and progressed to such an extent that continued detention could no longer be justified on legitimate penological grounds. However, Vinter and others v. United Kingdom was not an extradition case. This distinction is important. Within the domestic context, the applicant's legal position, having already been convicted and sentenced, is known. Moreover, the domestic system of review of the sentence is likewise known, both to the domestic authorities and the Court. In the extradition context, on the other hand, in a case such as the present where the applicant has not yet been convicted, a complex risk assessment is called for, a tentative prognosis that will inevitably be characterised by a very different level of uncertainty when compared to the domestic context. This calls – as a matter of principle, but also out of practical concerns – for caution in applying the principles flowing from Vinter and others v. United Kingdom, which were intended to apply within the domestic context, to their fullest extent in the extradition context. The principles set down in Vinter and others v. United Kingdom embrace both the substantive obligation on Contracting States to ensure that a life sentence does not over time become a penalty incompatible with Article 3, and also related procedural safeguards, which are not ends in themselves but serve in their observance by Contracting States to avoid a breach of the prohibition of inhuman and degrading punishment. Regarding the substantive obligation, the Court reiterates that exposing an individual to a real risk of inhuman and degrading treatment or punishment would be contrary to the spirit and purpose of Article 3. On the other hand, the procedural safeguards would appear to be better suited to a purely domestic context and consequently do not arise in relation to an individual whose extradition has been requested by a third State, as this would be an over extensive interpretation of the responsibility of a Contracting State in such a context. It follows that Contracting States are not to be held responsible under the Convention for deficiencies in the system of a third State when measured against the full Vinter and others v. United Kingdom standard. The Court also recognises that to require a Contracting State to

	scrutinise the relevant law and practice of a third State with a view to assessing its degree of compliance with these procedural safeguards may prove unduly difficult for domestic authorities deciding on extradition requests. Moreover, in the domestic context, in the event of a finding of a violation of Article 3 of the Convention, the applicant would remain in detention pending the application or introduction of a Convention-compliant review mechanism which could – but would not necessarily – lead to his release earlier than initially intended. Thus, the legitimate penological purposes of incarceration would not be undermined. In contrast, in the extradition context the effect of finding a violation of Article 3 of the Convention would be that a person against whom serious charges have been brought would never stand trial, unless he or she could be prosecuted in the requested State, or the requesting State could provide the assurances necessary to facilitate extradition. Allowing such a person to escape with impunity is an outcome which would be difficult to reconcile with society's general interest in ensuring that justice is done in criminal cases. It would also be difficult to reconcile with the interest of Contracting States in complying with their international treaty obligations, which aim to prevent the creation of safe havens for those charged with the most serious criminal offences. Therefore, while the principles set out in Vinter and others v. United Kingdom must be applied in domestic cases, an adapted approach is called for in the extradition context. First of all, a preliminary question has to be asked: namely, whether the applicant has adduced evidence capable of proving that there are substantial grounds for believing that, in the event of conviction, there is a real risk of a sentence of life imprisonment without parole. In this regard, it is for the applicant to demonstrate that such a penalty would be imposed. Such a risk will more readily be established if the applicant faces a mandatory sentence of life imprisonment. If it is established under the first limb of the inquiry that the applicant runs a real risk of a sentence of life imprisonment, then the second limb of the inquiry, having regard to the principles set out in Vinter and others v. United Kingdom, will focus on the substantive guarantee which is the essence of the Vinter and others v. United Kingdom case-law and is readily transposable from the domestic to the extradition context; that is, it must be ascertained by the relevant authorities of the sending State prior to authorising extradition that there exists in the requesting state a mechanism of sentence review which allows the competent authorities there to consider 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. As for the procedural safeguards afforded to serving "whole life prisoners", as stated above, the availability of these in the legal system of the requesting State is not a prerequisite for compliance by the sending Contracting State with Article 3 of the Convention. It follows that in an extradition case the question is not whether, at the time of the

	prisoner's extradition, sentences of life imprisonment in the requesting country are compatible with Article 3 of the Convention, by reference to all of the standards which apply to serving life prisoners in the Contracting States. Instead, the adapted approach comprises two stages: at the first stage it must be established whether the applicant has adduced evidence capable of proving that there are substantial grounds for believing that, if extradited, and in the event of his conviction, there is a real risk that, a sentence of life imprisonment without parole would be imposed on him. At the second stage it must be ascertained whether, as from the moment of sentencing, there is a review mechanism in place allowing the domestic authorities to consider the prisoner's progress towards rehabilitation or any other ground for release based on his or her behaviour or other relevant personal circumstances. In Trabelsi v. Belgium the Court did not address, as a preliminary step, the question of whether there existed a real risk that the applicant would be sentenced to life without parole. It also examined, at the moment of extradition, whether the Vinter and others v. United Kingdom criteria were satisfied in their entirety. For these reasons, the Court considers that Trabelsi v. Belgium should be overruled. The Court would emphasise that the prohibition of Article 3 ill-treatment remains absolute. In this regard, it does not consider that any distinction can be drawn between the minimum level of severity required to meet the Article 3 threshold in the domestic context and the minimum level required in the extra-territorial context. The applicant has not adduced evidence of any defendants with similar records to himself who were found guilty of similar conduct and were sentenced to life imprisonment without parole. Furthermore, while the Court cannot base its assessment on the likely sentence the applicant would receive if he were to plead guilty, it nevertheless recognises that there are many factors that contribute to the imposition of a sentence and, prior to extradition, it is impossible to address every conceivable permutation that could occur or every possible scenario that might arise. The length of the applicant's prison sentence might be affected by pre-trial factors, such as agreeing to cooperate with the US Government. Moreover, if the applicant were to plead guilty or be convicted at trial, the judge would have a broad discretion to determine the appropriate sentence after a fact finding process in which the applicant would have the opportunity to offer evidence regarding any mitigating factors that might justify a sentence below the range recommended by the Sentencing Guidelines. The sentencing judge would be required to have regard to the sentences given to the co conspirators, even if their situation was not identical to that of the applicant. Finally, the applicant would have the right to appeal against any sentence imposed. Therefore, the applicant cannot be said to have adduced evidence capable of showing that his extradition to the US would expose him to a real risk of treatment reaching the Article 3 threshold. *[paras. 83, 85, 89 through 99, 108 and 109]*

Muhammed Asif Hafeez v. the United Kingdom No. 14198/20 Type: Decision Date: 28 March 2023 Articles: N: 3, 6 Keywords: – assurances – extradition (grounds for refusal) – fair trial – ill-treatment – life sentence Links: English only Translations: not available	*Circumstances:* Extradition of a sixty-four year old Pakistani national with a number of health conditions, including type 2 diabetes, asthma and sleep apnoea, from the United Kingdom to the United States of America for the purposes of prosecution for drug-trafficking offences. *Relevant complaints:* 1. The applicant's extradition would violate his rights under Article 3 of the Convention due to the risk that he would be sentenced to life imprisonment without parole. 2. The applicant's extradition would violate his rights under Article 3 of the Convention due to the risk that he would be detained in, having regard to his medical conditions, inhuman and degrading conditions and that he would likely be held in solitary confinement both pre trial and post-conviction. 3. The applicant's extradition would violate his rights under Article 6 of the Convention due to the risk that he would likely be tried on evidence obtained from alleged co conspirators who had been unlawfully "rendered" to the United States from Kenya. *Court's conclusions:* 1. While the applicant's situation may not be entirely comparable to that of his co conspirators, and while those co-conspirators would have been entitled to a reduction in sentence on account of their guilty pleas, he has not adduced evidence of any defendants with similar records to himself who were found guilty of similar conduct and were sentenced to life imprisonment without parole. If convicted, the length of his sentence might also be affected by pre-trial factors, such as agreeing to cooperate with the US Government, and he would enjoy the same procedural safeguards relied on by the Court in *Sanchez-Sanchez*. Therefore, the applicant cannot be said to have adduced evidence capable of showing that his extradition to the US would expose him to a real risk of treatment reaching the Article 3 threshold on account of the risk that he would be sentenced to life imprisonment without parole. *[paras. 54 and 55]* 2. The US Attorneys have confirmed that they are not seeking special administrative measures. Neither the evidence before the Court nor the evidence before the domestic courts suggested that the applicant would be housed, post conviction, in a Supermax facility. Moreover, the applicant's medical conditions were not unusual for a man of his age and in any event they were being controlled by the prison authorities in the United Kingdom. The US prison authorities had been alerted to his health difficulties and had confirmed that both of the facilities he could be detained in would be able to cater adequately to his needs and he would be provided with a CPAP machine used to treat sleep apnoea. Consequently, the Court does not consider that any risk arising as a result of the likely

	conditions of detention in the US, either pre-trial or post conviction, would reach the minimum level of severity required by Article 3 of the Convention. *[paras. 65 and 66]* 3. No evidence has been adduced of any unlawful behaviour on the part of the US authorities. In addition, the District Judge was not satisfied on the evidence before him that one, or potentially more than one, of the applicant's co-conspirators might wish to and/or proceed to give evidence against him. Even if they did, there is no reason to doubt that the applicant would have the benefit of legal counsel and that it would be open to him to challenge the admissibility of any evidence relied upon by the Prosecution. That being the case, he cannot be said to have satisfied the burden of proof required to demonstrate a real risk of a flagrant denial of justice if he were to be extradited to the United States. *[para. 72]*
Khokhlov v. Cyprus No. 53114/20 Type: Judgment Date: 13 June 2023 Articles: Y: 5§1, 5§4 Keywords: – custody (length) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition from Cyprus to Russia for the purposes of prosecution. *Relevant complaints:* 3. The appeal proceedings, which had lasted from 7 October 2019 until 16 September 2020 without a hearing taking place, had not been conducted with "speediness"; this had led the applicant to withdraw his appeal and agree to his extradition in order to bring to an end his indefinite detention in Nicosia Central Prisons. 4. The applicant's detention had not been lawful, as the requirements of the Extradition Law had not been fulfilled. His detention had been arbitrary in the light of its length, and it had been prolonged "quasi-automatically" (even though the length of the extradition proceedings had been unreasonable) through no fault of his own, and without any alternative means of detention being considered. Despite his having agreed to be extradited, the applicant had remained in detention for an additional two months and twenty days (even though there had been flights available between Cyprus and Russia). The applicant had not been detained for reasons related to Covid-19, but simply in order that the two States could arrange his surrender at a date convenient for them, despite the resultant breach of domestic procedure and the sixty-day time-limit provided by the Extradition Law. *Court's conclusions:* 3. While a three- month delay in court proceedings on account of the Covid-19 pandemic may be understandable, proceedings in respect of the applicant's case only resumed on 11 September 2020, despite the fact that Covid-19 measures had come to an end on 5 June 2020; an additional three months was therefore allowed to pass without substantial progress being made in the proceedings. Although most proceedings were postponed owing to Covid-19, certain urgent applications (including appeals) continued to be examined. *[para. 79]*

	4. While the first decision on the merits was given on 20 May 2019 (that is, six months and twenty-seven days after the day on which the applicant was placed in detention pending extradition), it cannot be said that the proceedings were not pursued with due expedition. It is noted that the applicant contributed to the delay in the proceedings by lodging various requests for adjournments; despite warnings given by the court that the applicant would continue to be held in detention, the applicant's lawyer insisted that extra time was required in order for him to prepare the applicant's arguments properly. In addition, the case had a certain level of complexity, as the applicant and a Russian lawyer (who appeared at the hearing as a witness) strongly contested that any active criminal proceedings were ongoing against the applicant in Russia. This necessitated a request to the Russian authorities for clarification and the presentation of further evidence and witnesses in court in order that the matter could be clarified. Therefore, the court's task in verifying that the extradition request had been submitted in accordance with the relevant laws was not straightforward. In addition, the court made sure to schedule successive hearing dates and set tight deadlines for the examination of witnesses. As a result, the Court considers that the first-instance proceedings were pursued with due expedition. Similarly, the Court cannot blame the Government for the time that elapsed between 4 June 2019 and 4 July 2019 as a result of the applicant's withdrawal of habeas corpus application no. 94/2019 owing to the fact that it had not been properly pleaded. However, the same cannot be said for the ensuing proceedings, regarding which there were delays of sufficient length at various stages as to render the duration of those proceedings excessive. The Court notes, firstly, that the application concerning habeas corpus proceedings no. 118/2019 was listed for directions for the first time over a month after it had been lodged. Subsequently, on 8 September 2020 – one day before a scheduled hearing in respect of the case – the Government requested an extension of one week, as they had mistakenly failed to submit their observations on time. As regards the way in which the appeal proceedings were pursued, the Court reiterates its findings above. The Court notes in this regard that on account of the delays that occurred before the Supreme Court, it cannot be said that the habeas corpus (no. 118/19) proceedings and the appeal proceedings were pursued with due diligence. The Court also finds striking the fact that it took twenty-three days (from 16 September 2020 until 9 October 2020) for the Supreme Court's order – which had merely stated that the Supreme Court had decided to dismiss the appeal, pursuant to the applicant's request of 14 September 2020 – to be drawn up; the Supreme Court's dismissal of the appeal appears to have been necessary for the subsequent signing (in accordance with section 11 of the Extradition Law) of the extradition order by the Minister of Justice. The Government did not adduce any evidence capable

	of justifying these delays, which were not in line with the duty of the State authorities to pursue the extradition with due diligence. Lastly, the Court notes that after the dismissal of the applicant's appeal on 16 September 2020, his detention continued for a further two months and twenty days, until 6 December 2020. During that period there do not seem to have been any periods of inactivity. Nonetheless, the Court is concerned by the fact that on 29 October 2020 the Cypriot authorities suspended the applicant's extradition proceedings without a clear understanding as to when the surrender to Russia of the applicant would be possible. In fact, the Russian authorities asked for the surrender to be postponed until the end of the pandemic and the resumption of flights between Cyprus and Russia and in the meantime for the applicant to be kept in detention for as long as possible; the Cypriot authorities replied that the applicant's surrender had been postponed and that they would resume deliberations regarding his requested extradition "once the restrictive measures [were] lifted in a way that [rendered] the surrender [of the applicant] possible". Neither State had a concrete idea as to when the pandemic would end, or when flights would resume. In this connection, the Court reiterates that the domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention continues to be justified. In such circumstances the necessity of procedural safeguards becomes decisive. Without taking a stance on the respondent State's good faith, the Court takes issue with its decision to suspend the extradition until further notice, as in the absence of an agreed surrender date to begin with – as required by Article 18§3 of the Extradition Convention – this decision deprived the applicant of the procedural guarantees that were available to him under Article 18§4 of the Extradition Convention. The Government have also not pointed to any other safeguards available to the applicant in this regard, and nor have they raised a non- exhaustion plea concerning the applicant's complaints under this head. *[para. 96 through 101]*
Carvajal Barrios v. Spain No. 13869/22 Type: Decision Date: 4 July 2023 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence	*See the summary of the similar case of Sanchez-Sanchez v. the United Kingdom.*

Links: English only Translations: not available	

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)

Case Data	*Summary*
F. C. B. v. Italy No.: 12151/86 Type: Judgment Date: 28 August 1991 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]*
A. M. v. Italy No.: 37019/97 Type: Judgment Date: 14 December 1999 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English, French Translations: Ukrainian	*Circumstances:* Mutual legal assistance (hearing of witnesses) obtained by Italy from the United States of America. *Relevant complaints:* 1. Statements made outside Italian territory cannot be read out in trial in Italy. The acts performed pursuant to the rogatory letters were invalid and maintained that the fact that they had been read out at the applicant's trial had denied him any opportunity to examine his accusers. 2. As to the possibility of seeking examination of the witnesses under the Mutual Assistance Treaty, the rogatory letters had been issued without the applicant's knowledge and, as a result, he had been unable to exercise the rights and liberties afforded by Article 14 of that Treaty. *Court's conclusions:* 1. The rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 of the Convention if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial. In convicting the applicant in the instant case the domestic

	courts relied solely on the statements made in the United States before trial and that the applicant was at no stage in the proceedings confronted with his accusers. *[paras. 25 and 26]* 2. It should be noted that in his international rogatory letters of 16 March 1991, the Florence public prosecutor informed the American authorities that no lawyer was to be allowed to attend the requested examinations. In addition, the Government have not produced any court decision showing how the Treaty is applied. Accordingly, it has not been established that the procedure offered the accessibility and effectiveness required by Article 14 of the Mutual Assistance Treaty. Under these circumstances, the applicant cannot be regarded as having had a proper and adequate opportunity to challenge the witness statements that formed the basis of his conviction. *[paras. 27 and 28]*
Solakov v. FYROM No.: 47023/99 Type: Judgment Date: 31 October 2001 Articles: N: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English, French Translations: Albanian, Macedonian	*Circumstances:* Mutual legal assistance (hearing of witnesses) obtained by FYROM from the United States of America. *Relevant complaint:* Trial in FYROM was unfair, as the applicant had been unable to cross-examine the witnesses whose statements served as the only basis for his conviction and that he had been unable to obtain the attendance and examination of two witnesses for the defence. *Court's conclusions:* All the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. This does not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in court: to use as evidence such statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs 3(d) and 1 of Article 6 of the Convention, provided the rights of the defence have been respected. As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage. There is no indication that the applicant or his second lawyer expressed any intention to attend the cross-examination of the witnesses in the United States. In particular, the applicant declared before the investigating judge that he had left the decision whether or not to go to the United States to his second lawyer and that he had sufficient means to cover the travel expenses. The applicant's second lawyer never filed an application for a visa with the United States embassy and never requested the postponement of the hearing of the witnesses in case he thought he did not have sufficient time to obtain it. Moreover, the applicant's first lawyer never renewed his application for a visa. The present case can be distinguished from A.M. v. Italy where the witnesses were questioned by a police officer before trial and the applicant's lawyer was not allowed to attend their examination. *[paras. 57, 60 and 63]*
Somogyi v. Italy No.: 67972/01	*Circumstances:* In absentia judgment issued in Italy after serving summons on the applicant in Hungary by post and his failure to appear at trial.

Type: Judgment Date: 18 May 2004 Articles: Y: 6 Keywords: – fair trial – in absentia – mutual assistance (service of documents) Links: English, French Translations: not available	*Relevant complaints:* 1. The applicant had been convicted in his absence without having the opportunity to defend himself before the Italian courts. He had not received any information about the opening of proceedings against him, since the notice of the date of the preliminary hearing had never been served on him and the signature on the reply slip acknowledging receipt of the letter from the Rimini preliminary investigations judge was not his. as there was a reasonable doubt about the authenticity of the signature on the reply slip acknowledging receipt of the letter from the Rimini preliminary investigations judge, the Italian courts should have ordered a report from a handwriting expert in order to be able to verify whether the defendant had been informed of the charges. 2. Service of the notice concerned had not been effected in accordance with the procedure provided for in the Italo-Hungarian agreement of 1977, which was mandatory for all notifications between the signatory States; it should therefore be considered null and void. *Court's conclusions:* 1. It could not be considered that the applicant's allegations concerning the authenticity of the signature were prima facie without foundation, particularly in view of the difference between the signatures he produced and the one on the return slip acknowledging receipt and the difference between the applicant's forename (Tamas) and that of the person who signed the slip (Thamas). In addition, the mistakes in the address were such as to raise serious doubts about the place to which the letter had been delivered. Article 6 of the Convention imposes on every national court an obligation to check whether the defendant has had the opportunity to apprise himself of the proceedings against him where, as in the instant case, this is disputed on a ground that does not immediately appear to be manifestly devoid of merit. In the instant case the means employed by the national authorities did not achieve the result required by Article 6 of the Convention. As regards the Government's assertion that the applicant had in any event learned of the proceedings through a journalist who had interviewed him or from the local press, the Court points out that to inform someone of a prosecution brought against him is a legal act of such importance that it must be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights, as is moreover clear from Article 6§3(a) of the Convention; vague and informal knowledge cannot suffice. *[paras. 70, 72, 74 and 75]* 2. The Court does not consider it necessary to examine the questions concerned with application of the Italo-Hungarian agreement of 1977 or the European Convention on Mutual Assistance in Criminal Matters. It observes that it is competent to apply only the European Convention on Human Rights,

	and that it is not its task to interpret or review compliance with other international conventions as such. Moreover, it is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. *[para. 62]*
Marcello Viola v. Italy No.: 45106/04 Type: Judgment Date: 5 October 2006 Articles: N: 6 Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (videoconference) Links: English, French Translations: Icelandic, Italian, Turkish	*Circumstances:* Hearing by videoconference in a domestic trial (no mutual legal assistance in fact involved). *Relevant complaint:* The applicant had been forced to participate by videoconference in the appeal hearings. *Court's conclusions:* Although the defendant's participation in the proceedings by videoconference is not as such contrary to the Convention, it is incumbent on the Court to ensure that recourse to this measure in any given case serves a legitimate aim and that the arrangements for the giving of evidence are compatible with the requirements of respect for due process, as laid down in Article 6 of the Convention. The applicant's participation in the appeal hearings by videoconference pursued legitimate aims under the Convention, namely, prevention of disorder, prevention of crime, protection of witnesses and victims of offences in respect of their rights to life, freedom and security, and compliance with the "reasonable time" requirement in judicial proceedings. *[paras. 67 and 72]*
Van Ingen v. Belgium No.: 9987/03 Type: Judgment Date: 13 May 2008 Articles: N: 6§1 Keywords: – fair trial – mutual assistance (admissibility of evidence) Links: French only Translations: not available	*Circumstances:* Mutual legal assistance obtained (hearings, selected copies from an investigation file) by Belgium from the United States. *Relevant complaints:* The applicant claimed that the Court that sentenced him in 2002 had denied the prosecutor's request to have the court proceedings reopened in order to submit new documents issued by US authorities and argued that the Court had reached that decision without having had the opportunity to examine those documents. He claimed that, in the context of a fair trial, it is impossible for a court to judge the well-foundedness of a request to reopen proceedings if it hasn't examined the available documents. *Court's conclusions:* Although the applicant is not required to establish that his defence suffered as a result of the Court of appeals' refusal to reopen the proceedings to allow the prosecutor to adduce new evidence, he must however establish the relevance of this evidence in the context of the criminal charge brought against him. Assuming that some of the evidence might not have been identical to the evidence that was in the Belgian file and that it was only disclosed after it was sent by the Government to the Court in September 2007, the applicant only acquired knowledge of that evidence on that date. It is obvious that

	the applicant could not, under such circumstances, establish before Belgian courts that the examination of that evidence could prove relevant for his defence. He could however have established that before the Court. Yet, the applicant does not indicate how the new evidence would have assisted in changing the verdict issued against him by Belgian courts if it had been adduced in the proceedings before them. *[paras. 32 and 33]*
Rantsev v. Cyprus and Russia No.: 25965/04 Type: Judgment Date: 7 January 2010 Articles: Y: 2, 4, 5§1 Keywords: – custody (lawfulness) – mutual assistance – obligation to prosecute – right to life (procedural aspect) Links: English, French (extracts) Translations: Albanian, Arabic, Armenian, Azerbaijani, Bulgarian, Croatian, Georgian, German, Icelandic, Macedonian, Romanian, Russian, Serbian, Spanish, Turkish, Ukrainian	*Circumstances:* Mutual assistance requested by Russia from Cyprus. *Relevant complaint:* The Russian authorities should have applied to the Cypriot authorities under the Legal Assistance Treaty to initiate criminal proceedings, as the applicant had requested. Instead, the Russian authorities merely sought information concerning the circumstances of Ms. Rantseva's death. His repeated requests that Russian authorities take statements from two Russian nationals resident in Russia were refused as the Russian authorities considered that they were unable to take the action requested without a legal assistance request from the Cypriot authorities. *Court's conclusions:* Ms. Rantseva's death took place in Cyprus. Article 2 of the Convention does not require member States' criminal laws to provide for universal jurisdiction in cases involving the death of one of their nationals. Accordingly, unless it can be shown that there are special features in the present case which require a departure from the general approach, the obligation to ensure an effective official investigation applies to Cyprus alone. For an investigation into a death to be effective, member States must take such steps as are necessary and available in order to secure relevant evidence, whether or not it is located in the territory of the investigating State. The Court observes that both Cyprus and Russia are parties to the Mutual Assistance Convention and have, in addition, concluded the bilateral Legal Assistance Treaty. These instruments set out a clear procedure by which the Cypriot authorities could have sought assistance from Russia in investigating the circumstances of Ms. Rantseva's stay in Cyprus and her subsequent death. In the absence of a legal assistance request, the Russian authorities were not required under Article 2 of the Convention to secure the evidence themselves. *[paras. 243, 244 and 241]*
Zhukovskiy v. Ukraine No.: 31240/03 Type: Judgment Date: 3 March 2011 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial	*Circumstances:* Mutual assistance requested by Ukraine from Russia. *Relevant complaint:* The prosecutor had been present during the questioning of the witnesses in Russia, while the applicant's representative had not been. *Court's conclusions:* The domestic authorities examined different ways of obtaining the statements and opted for the questioning of the witnesses in Russia through the international legal assistance mechanism. Such a solution, to which the defence did not object, could be found reasonable. However, in the circumstances of the case it led to the situation in which the applicant found himself convicted of a very serious crime mainly on the basis of evidence given by witnesses none of whom were present during his

– mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English only Translations: not available	trial in Ukraine. The domestic courts did not hear the direct evidence of these witnesses and the applicant had no opportunity to cross-examine them. Being aware of difficulties in securing the right of the applicant to examine the witnesses in the present case, the Court considers that the available modern technologies could offer more interactive type of questioning of witnesses abroad, like a video link. The domestic authorities on their part had at least to ensure that they were informed in advance about the date and place of hearing and about questions formulated by the domestic authorities in the present case. Such information would give the applicant and his lawyer reasonable opportunity to request for clarifying or complementing certain questions that would deem important. *[paras. 45 and 46]*
Adamov v. Switzerland	*See List B*
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]*
Stojkovic v. France and Belgium No.: 25303/08 Type: Judgment	*Circumstances:* French letter of request to Belgium requesting that the applicant be questioned as a "legally assisted witness" in the presence of an attorney.

Date: 27 October 2011 Articles: Y: 6§1, 6§3(c) Keywords: – fair trial – mutual assistance (hearing witnesses) Links: French only Translations: not available	*Relevant complaint:* The applicant claimed that there was a violation of his defence rights as he had been questioned as a "legally assisted witness" by Belgian police without an attorney being present. He argued that an accusation cannot be based on evidence obtained through coercion or pressure and that the interest of Justice required that he should have been assisted by an attorney. *Court's conclusions:* The applicant's interview was conducted in accordance with the procedural regime applicable in Belgium, which provided for the questioning of all persons without any difference in treatment, whether or not there were any suspicions against them. The interview resulted exclusively from the execution of the letter of request. In that letter of request, the judge expressly stipulated that the applicant should be heard as a "legally assisted witness". That stipulation demonstrated, as required by French law, that there was evidence against the applicant which it made it plausible that he might have taken part in the perpetration of the offences. The interview had important repercussions on the applicant's situation so that there was a "criminal charge against him" which implied that he should have benefited from the protection offered under Article 6§1 and 6§3 of the Convention. While the restriction of the right concerned was not caused by French authorities, it was their duty to ensure that such a restriction did not compromise the fairness of the proceedings. The legal regime of the interview did not exempt the French authorities from verifying that it had been conducted in accordance with fundamental principles deriving from fair trial. Under Article 1 of the Convention, it was for the French authorities to ensure that the acts carried out in Belgium had not been in breach of the rights of the defence and thus to verify the fairness of the proceedings under their supervision. *[paras. 51 through 55]*
Fąfrowicz v. Poland No.: 43609/07 Type: Judgment Date: 17 April 2012 Articles: N: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (service of documents) Links: English only Translations: Polish	*Circumstances:* The applicant has been convicted in Poland on the basis of a statement of JH (present in the United States of America), whose presence in Poland has not been ensured by the trial court. *Relevant complaint:* The applicant's defence rights had been unduly curtailed as he could not cross-examine JH. The trial court had known JH's address in the USA but had not taken any action to secure his presence. *Court's conclusions:* The trial court cannot be blamed for having failed to request international judicial assistance since it has not been established that the court knew JH's address in the USA. *[para. 56]*

Damir Sibgatullin v. Russia No.: 1413/05 Type: Judgment Date: 24 April 2012 Articles: Y: 6§1, 6§3(d), 38 Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (service of documents) Links: English only Translations: not available	*Circumstances:* Conviction of a Russian national in Russia for crimes committed in Uzbekistan. Russia had requested Uzbekistan to serve the summons to trial in Russia on witnesses in Uzbekistan but they failed to appear for various reasons and, therefore, their statements from pre-trial proceedings were read instead. *Relevant complaint:* The applicant insisted that the only direct evidence implicating him in the crimes he had been found guilty of was the statements by the witnesses in Uzbekistan. Therefore, it was important for the trial court to hear the witnesses in person and to provide the applicant with an opportunity to cross-examine them. *Court's conclusions:* The Court is not convinced by the Government's argument that if the applicant had stayed in Uzbekistan he could have had an opportunity to take part in confrontation interviews with the prosecution witnesses, and there could accordingly have been no issue as regards the witnesses' absence from the trial. Furthermore, in the Court's view, there can be no question of waiver by the mere fact that an individual could have avoided, by acting diligently, the situation that led to the impairment of his rights. The conclusion is more salient in a case of a person without sufficient knowledge of his prosecution and of the charges against him and without the benefit of legal advice to be cautioned on the course of his actions, including on the possibility of his conduct being interpreted as an implied waiver of his fair trial rights. The Court reiterates that the applicant was only notified in person of the criminal proceedings against him upon his arrest in Russia in November 2003. It thus could not be inferred merely from his status as a fugitive from justice, which was founded on a presumption with an insufficient factual basis, that he had waived his right to a fair trial. The Court notes that the Regional Court did not have information explaining the reason for the absence of five of the eleven witnesses from the prosecution list. In fact, the trial court was not even aware whether the witnesses had been summoned. It also appears that it never received a response from the Uzbek authorities regarding Mr. A.'s attendance. The Regional Court, nevertheless, proceeded with the reading out of the depositions by those five witnesses and Mr. A., having noted that attempts to obtain their presence had already taken six months. While the Court is not unmindful of the domestic courts' obligation to secure the proper conduct of the trial and avoid undue delays in the criminal proceedings, it does not consider that a stay in the proceedings for the purpose of obtaining witnesses' testimony or at least clarifying the issue of their appearance at the trial, in which the applicant stood accused of a very serious offence and was risking a lengthy prison term, would have constituted an insuperable obstacle to the expediency of the proceedings at hand. The Regional Court excused the remaining witnesses, considering their absence to be justified either in view of their personal circumstances or because Uzbek officials had been unsuccessful in their attempts to find them. Regard

	being had to the circumstances of the case, the Court has serious doubts that the decision to accept the explanations and to excuse the witnesses could indeed be accepted as warranted. It considers that the Regional Court's review of the reasons for the witnesses' absence was not convincing. Whilst such reasons as inability to bear the costs of travel to Russia, poor health or a difficult family situation are relevant, the trial court did not go into the specific circumstances of the situation of each witness, and failed to examine whether any alternative means of securing their depositions in person would have been possible and sufficient. It also does not escape the Court's attention that under the relevant provisions of the Russian law witnesses were afforded a right to claim reimbursement of costs and expenses, including those of travel, incurred as a result of their participation in criminal proceedings. The Court is concerned with the Regional Court's failure to look beyond the ordinary means of securing the right of the defence to cross-examine witnesses, for instance by setting up a meeting between the applicant's lawyer and witnesses in Uzbekistan or using modern means of audio-visual communication to afford the defence an opportunity to put questions to the witnesses. Furthermore, while the Court understands the difficulties encountered by the authorities in terms of resources, it does not consider that reimbursing travel costs and expenses to the key witnesses for them to appear before the trial court would have constituted an insuperable obstacle. *[paras. 47, 55 and 56]*
El Haski v. Belgium No.: 649/08 Type: Judgment Date: 25 September 2012 Articles: Y: 6 Keywords: – fair trial – mutual assistance (admissibility of evidence) Links: English, French Translations: German	*Circumstances:* The applicant, a Morroccan national, was prosecuted and convicted in Belgium for participation in a terrorist organisation, using evidence (interview reports) from France and Morocco. *Relevant complaint:* The applicant complained that the domestic courts had principally and essentially based his conviction for participation in a terrorist organisation on evidence that was vitiated and obtained in conditions that were incompatible with the requirements of the Convention. *Court's conclusions:* Information, which emanates from diverse, objective and concurring sources, establishes that there was, at the material time, a "real risk" that the impugned statements had been obtained in Morocco using treatment prohibited by Article 3 of the Convention. Article 6 of the Convention thus required the domestic courts not to admit them in evidence, unless they had first verified, in view of elements specific to the case, that they had not been obtained in such manner. As indicated above, in dismissing the applicant's request for the exclusion of those statements, the Brussels Court of Appeal merely found that he had not adduced any "concrete evidence" that would be capable of raising "reasonable doubt" in this connection. This is sufficient to find that there has been a violation of Article 6 of the Convention in the present case. *[para. 99]*

Tseber v. Czech Republic No.: 46203/08 Type: Judgment Date: 22 November 2012 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (hearing witnesses) Links: French only Translations: Czech	*Circumstances:* Conviction on the basis of interrogation of a witness (in the presence of a judge) before pre-trial proceedings formally commenced and without presence of the (future) accused person and/or his lawyer. *Relevant complaint:* The applicant complained did not have the opportunity to examine the main witness for prosecution and, therefore, did not receive a fair trial. *Court's conclusions:* The impossibility to locate a witness could constitute, under certain conditions, a fact justifying admissibility of such depositions in a trial even though the defence could not question them in any stage of the proceedings. For the admissibility of using such evidence, the authorities must take positive measures to enable the accused person to examine or have examined witnesses against them; namely, they must actively search for these witnesses. To assess whether the positive measures taken by the national authorities are sufficient or not, the Court takes into consideration whether they had done everything that could be reasonably expected of them to locate the witness in question and whether they had not lacked diligence in their attempts to ensure their presence at the trial. In other words, it must be examined whether the absence of the witness at the trial is attributable to the national authorities. *[para. 48]*
Kostecki v. Poland No.: 14932/09 Type: Judgment Date: 4 June 2013 Articles: N: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (hearing witnesses) Links: English only Translations: Polish	*Circumstances:* Trial court's refusal to question a witness, whose address had been provided by the applicant, by way of international judicial assistance by a court in Ireland. Before that, the trial court, after having unsuccessfully to summon the witness within Poland and being informed by the police that the witness had been living in England at an unknown address, had his deposition from pre-trial proceedings read out in the trial in accordance with Polish Code of Criminal Procedure. *Relevant complaint:* The applicant had been unable to examine witnesses whose statements had served as the main basis for his conviction. *Court's conclusions:* The Court does not discern anything irregular in the trial court's refusal to have recourse to international judicial assistance in Ireland, given that the police's inquiry indicated that the witness actually lived in England. *[para. 65]*
Janyr v. the Czech Republic No.: 42937/08 Type: Judgment Date: 31 October 2013 Articles: Y: 6§1; N: 6§3(b)(c) Keywords:	*Circumstances:* Refusal of Czech court to interview a witness (G.) residing in Gibraltar. *Relevant complaint:* The applicant complained of the failure to respect the principle of equality of arms. *Court's conclusions:* The Convention does not oblige the courts to accede to all requests for the summoning of witnesses on their behalf. In this case, the courts duly responded to the applicant's request to hear G., referring not only to the difficulties associated with the summons of G. but also to the fact that

– fair trial – mutual assistance (hearing witnesses) Links: French only Translations: Czech	the other evidence made it unnecessary. Moreover, the applicant has not shown that the hearing of G. could have brought new and relevant elements to the examination of his case. *[para. 82]*
Schatschaschwili v. Germany No.: 9154/10 Type: Judgment [GC] Date: 15 December 2015 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English, French Translations: Albanian, Azerbaijani, Croatian, Czech, Georgian, German, Macedonian, Polish, Romanian, Russian, Swedish, Turkish, Ukrainian Chamber Judgment: English, French (Translations: German, Turkish)	*Circumstances:* Prosecution of a Georgian national in Germany. Two witnesses were interviewed by the police and by an investigating judge in Germany in pre-trial proceedings but returned to Latvia before the trial began. *Relevant complaint:* The applicant alleged that his trial had been unfair as neither he nor his lawyer had been granted an opportunity at any stage of the criminal proceedings against him to examine the victims and only direct witnesses of the offence allegedly committed by him in Göttingen in February 2007, on whose statements the Göttingen Regional Court had relied in convicting him.. *Court's conclusions:* According to the principles developed in the Al-Khawaja and Tahery judgment, it is necessary to examine in three steps the compatibility with Article 6§1 and §3(d) of the Convention of proceedings in which statements made by a witness who had not been present and questioned at the trial were used as evidence. The Court must examine: (i) whether there was a good reason for the non-attendance of the witness and, consequently, for the admission of the absent witness's untested statements as evidence; (ii) whether the evidence of the absent witness was the sole or decisive basis for the defendant's conviction; and (iii) whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps caused to the defence as a result of the admission of the untested evidence and to ensure that the trial, judged as a whole, was fair. However, all three steps of the test are interrelated and, taken together, serve to establish whether the criminal proceedings at issue have, as a whole, been fair. In cases concerning a witness's absence owing to unreachability, the Court requires the trial court to have made all reasonable efforts to secure the witness's attendance. The fact that the domestic courts were unable to locate the witness concerned or the fact that a witness was absent from the country in which the proceedings were conducted was found not to be sufficient in itself to satisfy the requirements of Article 6§3(d), which require the Contracting States to take positive steps to enable the accused to examine or have examined witnesses against him. Such measures form part of the diligence which the Contracting States have to exercise in order to ensure that the rights guaranteed by Article 6 are enjoyed in an effective manner. Otherwise, the witness's absence is imputable to the domestic authorities. It is not for the Court to compile a list of specific measures which the domestic courts must have taken in order to have made all reasonable efforts to secure the attendance of a witness

	whom they finally considered to be unreachable. However, it is clear that they must have actively searched for the witness with the help of the domestic authorities including the police and must, as a rule, have resorted to international legal assistance where a witness resided abroad and such mechanisms were available. *[paras. 107, 118, 120 and 121]* *NOTE: The Court's conclusions address in considerable detail the issue of admissibility of evidence provided by absent witnesses both in domestic and international context as well as various safeguards that may contribute to the admissibility of such evidence in trial.*
G. S. B. v. Switzerland No.: 28601/11 Type: Judgment Date: 22 December 2015 Articles: N: 8 Keywords: – mutual assistance (bank information) Links: French only Translations: Czech	*Circumstances:* Transmission of bank information concerning a national of the United States from Switzerland to 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]*
Bátěk and Others v. the Czech Republic No.: 54146/09 Type: Judgment Date: 12 January 2017 Articles: N: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English only Translations: Czech	*Circumstances:* Prosecution of three Czech nationals in the Czech Republic for corruption (the applicants worked as customs officers). In the pre-trial proceedings, the police interviewed twenty truck drivers from different countries without the presence of the applicants. *Relevant complaint:* According to the applicants, interviews with four of the drivers were of decisive significance. Three of them were of Romanian nationality and one of them was a Bulgarian citizen. The applicants complained that they had not had an opportunity to question the witnesses during the pre-trial proceedings. *Court's conclusions:* The Court is mindful of the difficulties encountered by the authorities, bearing in mind that the case at hand involved eighteen defendants and a large number of witnesses, including twenty truck drivers from different countries who travelled across Europe rather than remaining at their usual places of residence, and who were heard as witnesses at the pre-trial stage of the proceedings in the presence, and under the supervision, of a judge. The Court also notes in this regard the fact that it had apparently not been commonplace to use video conferencing facilities at the time when the witnesses were heard. Therefore, noting the trial court's rigorous assessment of all the evidence, which shows no sign of arbitrariness, and bearing in mind the public interest in seeing the crime of corruption properly

	prosecuted, the Court finds that – attaching significant weight to the fact that the truck drivers' depositions were the sole or decisive evidence and that there was indeed other, substantial and decisive incriminating documentary evidence – the lawfully administered procedural safeguards were, in the circumstances of the present case, capable of counterbalancing certain handicaps under which the defence laboured. It cannot therefore be said that the criminal proceedings, looked at as a whole, were rendered unfair. *[paras. 61 and 62]*
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]*
van Wesenbeeck v. Belgium Nos.: 67496/10 & 52936/12 Type: Judgment Date: 23 May 2017 Articles: N: 6§1, 6§3(d) Keywords: – covert investigations – fair trial – mutual assistance (admissibility of evidence) Links: French only Translations: Romanian	*Circumstances:* Utilization of undercover agents in domestic criminal proceedings. While this case concerns purely domestic proceedings, it may have implications on use of covert investigations in mutual legal assistance context. *Relevant complaint:* The applicant challenged the existence of a separate and confidential file concerning the covert operation held by the prosecution and complained that, as he had not had access to that file, he had been prevented from verifying whether the use of special methods of observation and infiltration has been done in accordance with the principles of subsidiarity and proportionality and if the undercover agents have not resorted to provocation. *Court's conclusions:* Article 6§1 of the Convention prohibits provocation; public interest cannot justify the use of evidence gathered as a result of provocation. The Court is, however, not convinced that the situation under consideration falls within the category of provocation cases. The summary character of the applicant's defense did not prevent the courts from exercising control and examining the facts of the case from the point of view of provocation in order to reject those allegations on the basis of the elements of the file. The documents in the confidential file can not be used as evidence to the detriment of the accused. In the present case, the Indictments Chamber was able to establish, on the basis of the reports in the file, that on 17 September 2008 sufficiently concrete evidence of the facts had been gathered to launch a proactive research. The *ab initio* restriction of the rights of defense was justified and was sufficiently compensated by the monitoring procedure carried out beforehand by an independent and impartial court, namely the Indictments Chamber. Provided that the rights of the defense are respected, it may be legitimate for police authorities to wish to preserve the anonymity of an agent employed in secret activities in order not only to ensure his or her protection and that of his or her family but also not to compromise the possibility of using him or her in future operations. The national courts relied on the evidence of the undercover agents but the Court of Appeal expressly stated that it attached only a "relative" probative value. In establishing the truth and deciding on the applicant's conviction, the courts also relied on other evidence. These other elements – the hearing of other witnesses, property seized during searches and telephone conversations – had the advantage of corroborating the information gathered during the infiltration and observation operations. As explained by the court of first instance, the reports drawn up by the two agents and their results could be compared, the accused were able to call witnesses, witnesses had been heard concerning the pleas raised by the applicant concerning the undercover agents. In addition, both the trial court and the Court of Appeal rigorously examined all the

	evidence, including evidence from undercover agents and other evidence. The court itself and the defendants could have confronted the reports relating to the discoveries of the said agents. Therefore, the applicant was able to challenge the evidence gathered by the infiltrators and there were thus sufficient procedural safeguards to offset the difficulties caused to the defense as a result of the admission of these elements as evidence, even though the undercover agents could not be interviewed by them, and to ensure fairness of the proceedings as a whole. *[paras. 80 through 83, 101, 104, 110 and 111]*
Pirozzi v. Belgium	*See List B*
Benedik v. Slovenia No.: 62357/14 Type: Judgment Date: 24 April 2018 Articles: Y: 8 Keywords: − mutual assistance (admissibility of evidence) − mutual assistance (ISP data) Links: English only Translations: Portuguese, Romanian, Turkish, Ukrainian	*Circumstances:* The Slovenian police, without obtaining a court order, requested a Slovenian Internet service provider ("the ISP"), to disclose data regarding the user to whom a dynamic IP address had been assigned. The data provided by the ISP enabled the police to charge the applicant with the criminal offence of displaying, manufacturing, possessing and distributing pornographic material (child pornography). *Relevant complaint:* The applicant's right under Article 8 of the Convention had been breached because the police had unlawfully obtained information leading to his identification from his Internet service provider. *Court's conclusions:* Section 149b(3) of the Criminal Procedure Act, relied on by the domestic authorities, concerned a request for information on the owner or user of a certain means of electronic communication. It did not contain specific rules as to the association between the dynamic IP address and subscriber information. Article 37 of the Constitution required a court order for any interference with privacy of communication. The Electronic Communications Act, which specifically regulated the secrecy and confidentiality of electronic communication, did not at the relevant time provide for the possibility that subscriber information and related traffic data be accessed and transferred for the purposes of criminal proceedings. It provided that electronic communications, including the related traffic data, were confidential and as such should be protected by the ISP. It further stipulated that the ISP should not transfer the traffic data to others unless this was necessary for the provision of the service, except where the lawful interception of communications had been ordered by the competent authority. The only reason for the Constitutional Court dismissing the applicant's complaint – that is, for approving of the disclosure of the subscriber information without a court order – was the presumption that the applicant had "waived the legitimate expectation of privacy". However, the Court, having regard to its findings in the context of the applicability of Article 8, does not find the Constitutional Court's position on that question to be reconcilable with the scope of the right to privacy under the Convention. Bearing in mind the Constitutional Court's finding that the "identity of the communicating individual" fell within the scope

	of the protection of Article 37 of the Constitution and the Court's conclusion that the applicant had a reasonable expectation that his identity with respect to his online activity would remain private, a court order was necessary in the present case. The domestic authorities' reliance on section 149b(3) of the CPA was manifestly inappropriate and it offered virtually no protection from arbitrary interference. At the relevant time, there appears to have been no regulation specifying the conditions for the retention of data obtained under section 149b(3) of the CPA and no safeguards against abuse by State officials in the procedure for access to and transfer of such data. As regards the latter, the police, having at their disposal information on a particular online activity, could have identified an author by merely asking the ISP provider to look up that information. Furthermore, no independent supervision of the use of these police powers has been shown to have existed at the relevant time, despite the fact that those powers, as interpreted by the domestic courts, compelled the ISP to retrieve the stored connection data and enabled the police to associate a great deal of information concerning online activity with a particular individual without his or her consent. *[paras. 127, 129 and 130]* *NOTE: While the case does not directly address a mutual legal assistance issue, the Court's conclusions may be of relevance in mutual legal assistance context as well.*
Visy v. Slovakia No.: 70288/13 Type: Judgment Date: 16 October 2018 Articles: Y: 8 Keywords: – mutual assistance (admissibility of evidence) Links: English only Translations: Romanian	*Circumstances:* In 2009, the applicant's business premises in Slovakia were searched by authorities of Slovakia upon mutual legal assistance request of Austrian authorities. During the search, business documents and storage media were seized by the authorties of Slovakia and later handed over to the Austrian authorities. In 2010, the Constitutional Court of Slovakia found that the warrant issued in Slovakia for the search and seizure did not extend to the applicant and his office and that the terms of the warrant had, therefore, been exceeded, in violation of the applicant's rights to the peaceful enjoyment of his possessions, respect for his private life, and judicial and other legal protection. Accordingly, the authorities of Slovakia were ordered to stop violating the applicant's rights and to ask the Austrian authorities for the return of the unlawfully seized items with a view to their restitution to the applicant. The items were returned to Slovakia and in 2012, the authorities of Slovakia issued a decision restoring those items to the applicant. The storage media contained, inter alia, legal advice protected by lawyer-client privilege. On 7 March 2012 at 9.10 a.m. the items were restored to the applicant's lawyer and, at 9.15 a.m., they were all seized from him again with reference to a letter rogatory from the Vienna office of the Prosecution Service of Austria of 14 April 2011. That letter sought specifically the seizure of the same items as were to be restored to the applicant and referred to the European Convention on Mutual Assistance in Criminal Matters, the Schengen Implementing Convention, and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

	Relevant complaint: The re-seizure of 7 March 2012, which involved, among other things, legal advice protected by lawyer-client privilege, was contrary to the applicant's right to respect for his private life and correspondence, as provided in Article 8 of the Convention. *Court's conclusions:* Since the seizure had taken place immediately after the items in question had been returned to the applicant's lawyer, he had been deprived of the opportunity to confer with him and, by extension, of the possibility of properly exercising his rights. The applicant's argument both before the domestic authorities and before the Court that the media that had been seized again contained legal advice protected by lawyer-client privilege does not appear to have been addressed at all by the PPS or the Constitutional Court. *[paras. 43 and 45]*
Güzelyurtlu and Others v. Cyprus and Turkey	*See List B*
Sigurður Einarsson and Others v. Iceland No.: 39757/15 Type: Judgment Date: 4 June 2019 Articles: Y: 6§1; N: 6§1, 6§3(b), 6§3(d), Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (videoconference) Links: English only Translations: Portuguese, Ukrainian	*Circumstances:* The applicants, all Icelandic nationals, were tried and found guilty in Iceland of market manipulation and breach of trust in connection with the 2008 collapse of one of Iceland's largest banks. *Relevant complaint:* Neither the District Court nor the Supreme Court had heard two Qatari nationals, who the applicants considered key defence witnesses, and that insufficient efforts had been made to summon them or to obtain their testimony via video or telephone. The defence had pushed very hard and consistently on this matter, raising the question of these witnesses several times. In their view, it could have been arranged for the two witnesses to be questioned by the prosecution and the defence at the home of one of them in London or at an Embassy. Alternatively, the prosecution could have requested the District Court to summon the witnesses under section 120 § 2 of the Criminal Procedures Act, or the court could have summoned them on its own initiative. Although this would not have had any legal effect outside Icelandic jurisdiction, it would have highlighted the importance of their presence, much more so than an informal e-mail. They also complained that the statements taken from those individuals during the investigation had been totally disregarded. Moreover, the defence had not been invited to participate in the interviews with these two Qatari nationals in London but had only learned of them later. In the applicants' view, the police had failed to ask these Qatari nationals crucial questions about the nature of the interest of one of them in the bank and the purpose of his investment. The applicants stressed that the complaint related not to the use of statements of absent witnesses but rather to the absence of two witnesses whom the defence wished to examine and who could possibly have been persuaded to testify in an alternative way than appearing before the court. *Court's conclusions:* The applicants did not submit a sufficiently reasoned request for examination of the witnesses in question. In particular, they did not, in the proceedings before the domestic courts, elaborate

	on the purpose of such an examination. In their submissions to the Supreme Court, the applicants merely maintained in a rather general manner that the witnesses could shed light on the background to the transactions and clarify their purpose. While it is indisputable that they played a key role in the transactions, the evidence which it was proposed they would provide was not in the Court's view such as to put in question the charges against the applicants. Under Icelandic law it was open to the defence to call the witnesses directly but that no attempt was made by the defence to secure their attendance, although they were regarded as key witnesses for the defence. However, the Court recognises that a summons issued by the court itself could have had greater authority than a summons by the defence, especially given that the witnesses in question were foreign nationals living abroad (and furthermore enjoying diplomatic status), and that primary responsibility for securing the attendance of witnesses lay with the prosecution. The Supreme Court considered that the District Court judgment could only be quashed if it could be established that the evidence of the two witnesses, or the absence thereof, might have had a significant impact on the outcome of the case. It also emphasised that the prosecution would have to bear the adverse consequences of the lack of that evidence. Given the limited and vague scope of the applicants' request, the Court is satisfied that this was an adequate response to that request. Moreover, the Court bears in mind that the witnesses were not within Icelandic jurisdiction and could not be compelled to attend, and that they had made it clear that they did not wish to participate in the proceedings, despite having been informed informally by the Special Prosecutor that the prosecution and the court itself wished to hear them and that they could give evidence by telephone. In these circumstances, it appears unlikely that further efforts to secure their participation would have met with any success. In the present case, the Court sees nothing arbitrary or manifestly unreasonable in the decision not to rely on those statements as evidence in the case, firstly as they had been obtained in informal interviews and secondly as there was no opportunity to have the evidence tested in court. *[paras. 112 through 114 and 116]*
Kartsivadze v. Georgia No.: 30680/09 Type: Judgment Date: 12 December 2019 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial	*Circumstances:* Reliance of Georgian courts (in trial) on pre-trial statements of a witness. These statements served as the sole direct evidence in respect of the charges of murder and attempted murder (corroborative evidence in the case had rather low probative value). *Relevant complaint:* The applicant had not had an opportunity to examine D.M. – the victim of, and the only direct witness to the offences of murder and attempted murder. Insufficient efforts had been made to summon him or to obtain his testimony via other means. *Court's conclusions:* The unreachability of a witness owing to his or her departure abroad or for any other reason does not in itself constitute sufficient reason to justify the relevant witness's absence from the

– mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English only Translations: not available	trial. Rather, the domestic courts are required to actively search for such a witness with the help of the domestic authorities, including the police, and must, as a rule, ask for international legal assistance in the event that such a witness is abroad and such mechanisms are available. The domestic courts stopped making efforts to ensure the witness's attendance at the trial proceedings after they were informed that the witness had left the country. Under the relevant domestic and international law in force at the material time, the domestic courts had at their disposal several instruments for searching for and compelling reluctant witnesses to appear before them or for seeking foreign assistance in enforcing such measures. None of the courts dealing with the applicant's case considered using any of those tools. The appeal court readily accepted the four-month-old border records attesting to D.M.'s departure, even though the latter had informed the trial court at the time of that departure that he intended to stay abroad for only two or three months. *[paras. 52 through 54]*
Saribekyan and Balyan v. Azerbaijan No.: 35746/11 Type: Judgment Date: 30 January 2020 Articles: Y: 2, 3 Keywords: – mutual assistance – right to life (procedural aspect) Links: English only Translations: not available	*Circumstances:* Death of Armenian national while detained in Azerbaijan on suspicion of spying and intending to commit a terrorist act. The case concerns (inter alia) the issue of procedural limb of Article 2 of the Convention and obligation to cooperate (reply to a request for mutual legal assisstance) with a foreign State with which diplomatic relations have been suspended. *Relevant complaint:* The failure of the Azerbaijani authorities to answer to the request of the Armenian Prosecutor-General for legal assistance in the investigation of the death of the applicant's son was a breach of Azerbaijan's positive obligations under the 1993 CIS Convention and a violation of the procedural aspects of Article 2. *Court's conclusions:* The Azerbaijani Prosecutor-General refused to reply to the request for legal assistance made by the Armenian Prosecutor-General under the 1993 CIS Convention, even when that request was repeated via the CIS Coordinating Council. The Court cannot accept the respondent Government's contention that the Azerbaijani authorities had no duty to cooperate on account of the suspension of all diplomatic relations between the two countries. The lack of diplomatic relations does not absolve a Contracting State from the obligation under Article 2 to cooperate in criminal investigations. *[para. 73]*
X and Others v. Bulgaria No.: 22457/16 Type: Judgment [GC] Date: 2 February 2021 Articles: Y: 3 (procedural aspect), N: 3 (substantive aspect)	*Circumstances:* The five original applicants, a couple and their minor children, all Italian nationals, complained under Articles 3, 6, 8 and 13 of the Convention of the sexual abuse to which the three children had allegedly been subjected while living in an orphanage in Bulgaria, and of the lack of an effective investigation in that regard. *Relevant complaint:* The applicants criticised the manner in which the Bulgarian authorities had carried out the investigation. In the applicants' view, in order for the investigation to be effective, the Bulgarian

Keywords: – ill-treatment – mutual assistance – mutual assistance (hearing witnesses) Links: English, French Translations: not available	authorities should (inter alia) have filed a request to interview the applicants, their parents and other potential witnesses in Italy. *Court's conclusions:* The applicants' accounts, as obtained and recorded by the psychologists from the RTC with the help of the applicants' father, and the accounts they subsequently gave to the Italian public prosecutor for minors, which were also recorded on DVD, were deemed credible by the Italian authorities on the basis of the findings made by specialists, contained some precise details, and named individuals as the perpetrators of the alleged abuse. Most of the available documents were transmitted progressively to the Bulgarian authorities in the context of several requests for the opening of criminal proceedings made by the Milan public prosecutor via diplomatic channels and later by the Italian Ministry of Justice and the CAI. If the Bulgarian authorities had doubts as to the credibility of those allegations, in particular on account of certain contradictions observed in the applicants' successive accounts or the possibility that their parents had influenced them, they could have attempted to clarify the facts by filing a request to interview the applicants and their parents. This would have made it possible to assess the credibility of the applicants' allegations and if necessary to obtain further details concerning some of them. As professionals who had heard the children's statements, the various psychologists who had spoken with the applicants in Italy would also have been in a position to provide relevant information. It is true that it might not have been advisable for the Bulgarian authorities to interview the applicants given the risk of exacerbating whatever trauma the applicants may have suffered, the risk that the measure would prove unsuccessful in view of the time that had passed since their initial disclosures, and the possibility that their accounts would be tainted by overlapping memories or outside influences. Nevertheless, in these circumstances the Bulgarian authorities should have assessed the need to request such interviews. The decisions given by the prosecuting authorities do not, however, contain any reasoning in this regard and the possibility of questioning the applicants appears not to have been considered, presumably for the sole reason that they were not living in Bulgaria. The Court observes in that regard that Article 38§2 of the Lanzarote Convention provides that victims of alleged abuse may make a complaint before the competent authorities of their State of residence and cannot be required to travel abroad. Article 35 of that Convention, for its part, provides that all interviews with the child should as far as possible be conducted by the same person and that, where possible, audiovisual recordings should be used in evidence. Hence, in the instant case the Bulgarian authorities, guided by the principles set out in the international instruments, could have put measures in place to assist and support the applicants in their dual capacity as victims and witnesses, and could have travelled to Italy in the context of mutual legal assistance or requested the Italian authorities to interview the applicants again. According to the Court's case-law, in

	transnational cases the procedural obligation to investigate may entail an obligation to seek the cooperation of other States for the purposes of investigation and prosecution. The possibility of recourse to international cooperation for the purposes of investigating child sexual abuse is also expressly provided for by Article 38 of the Lanzarote Convention. In the present case, although the Milan public prosecutor declined jurisdiction on the grounds that there was an insufficient jurisdictional link with Italy in respect of the facts, it would have been possible for the applicants to be interviewed under the judicial cooperation mechanisms existing within the European Union in particular. Even if they had not sought to interview the applicants directly, the Bulgarian authorities could at least have requested from their Italian counterparts the video recordings made during the applicants' conversations with the psychologists from the RTC and their interviews with the public prosecutor for minors. Because of this omission in the investigation, which could very easily have been avoided, the Bulgarian authorities were not in a position to request professionals "trained for this purpose" to view the audiovisual material and assess the credibility of the accounts given. Similarly, as the applicants did not produce medical certificates, the Bulgarian authorities could, again in the context of international judicial cooperation, have requested that they undergo a medical examination which would have enabled certain possibilities to be confirmed or ruled out, in particular the first applicant's allegations of rape. Further, the applicants' accounts and the evidence furnished by their parents also contained information concerning other children who had allegedly been victims of abuse and children alleged to have committed abuse. Even if it was not possible to institute criminal proceedings against children under the age of criminal responsibility, some of the acts described by the applicants as having been perpetrated by other children amounted to ill-treatment within the meaning of Article 3 of the Convention and violence within the meaning of Article 19 of the Convention on the Rights of the Child; hence, the authorities were bound by the procedural obligation to shed light on the facts alleged by the applicants. However, despite these reports, the investigations were limited to interviewing and issuing questionnaires to a few children still living in the orphanage, in an environment that was liable to influence their answers. Indeed, the Bulgarian authorities did not attempt to interview all of the children named by the applicants who had left the orphanage in the meantime, whether directly or, if necessary, through recourse to international judicial cooperation mechanisms. All these considerations suggest that the investigating authorities, who did not make use, in particular, of the available investigation and international cooperation mechanisms, did not take all reasonable measures to shed light on the facts of the present case and did not undertake a full and careful analysis of the evidence before them. The omissions observed appear sufficiently serious for it to be considered that the investigation carried out was not effective for the purposes of Article 3 of the Convention, interpreted in

	the light of the other applicable international instruments and in particular the Lanzarote Convention. *[paras. 215 through 220 and 228]*
Dijkhuizen v. the Netherlands No.: 61591/16 Type: Judgment Date: 8 June 2021 Articles: N: 6 Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (temporary transfer) – mutual assistance (videoconference) Links: English only Translations: Dutch	*Circumstances:* The applicant, a Netherlands national held in custody in Peru for the purposes of prosecution there, was not temporarily transferred to the Netherlands in order to be able to be personally present at appeal hearing in the criminal proceedings against him in the Netherlands. The applicant originally refused to be heard by videoconference or under letters rogatory. He (partially) changed his mind only four days before the trial hearing, by which time organizing a hearing by videoconference was impossible. *Relevant complaint:* The applicant had been denied a fair hearing by the Court of Appeal inasmuch as he had not been enabled to attend the hearing in person alongside his counsel in order to dispute evidence, present an alternative version of the facts, make requests for further investigations and cross-examine witnesses directly. The applicant's initial refusal to participate in the hearing by videoconference had been inspired by the fear that any statements which he might make and which might incriminate others might come to the notice of the other persons thus incriminated. He had changed his position only after attempts to secure his release from Peruvian detention had failed. At all events, no attempt had ever been made to organise a videoconference. *Court's conclusions:* The Government state that Peruvian law prevented the extradition or temporary surrender to foreign powers of persons who were detained as criminal suspects in Peru itself. They base their statement on information obtained by a liaison officer in Peru from a Peruvian public prosecutor. The applicant relies heavily on the Advocate General's failure to seek a formal decision on extradition or mutual legal assistance but does not attempt to deny that this information is correct. Accordingly, although a formal decision by the competent Peruvian authority would have dispelled all possible doubt, the Court is satisfied that for reasons of Peruvian law it was not possible at the relevant time to obtain the cooperation of the Peruvian authorities with a view to securing the applicant's physical presence, from which it follows that a formal request would have been pointless. Consequently, it cannot be said that the Netherlands authorities did not display due diligence in pursuing the possibilities of international legal assistance. In the circumstances, and also taking into account that the proceedings at issue were part of a substantial and complex criminal trial in which seven suspects were involved who all resided in different countries at that time, the Court of Appeal was entitled to substitute a hearing in which the applicant participated by videoconference – as permitted by domestic law and indeed, in principle, by Article 6 of the Convention – for a hearing at which the applicant could be physically present. The applicant's repeated and unambiguous refusal – which was maintained over a period of eleven months, until the

	closing address of the appeal hearing – cannot be construed otherwise than as a waiver of the right to take part in the hearing in his own case. Moreover, since the applicant's refusal was twice stated by his counsel in open court, it cannot be found that this waiver was not attended by guarantees commensurate with the importance of the right thus waived. In the circumstances of the present case, therefore, the Court of Appeal was entitled to disregard the request made by the applicant's counsel in his closing speech to prolong the proceedings yet again so that the applicant could participate by videoconference. *[paras. 55, 55, 60 and 61]*
Zoletic and Others v. Azerbaijan No.: 20116/12 Type: Judgment Date: 7 October 2021 Articles: Y: 4§2 Keywords: – mutual assistance – obligation to prosecute Links: English only Translations: Macedonian, Serbian	*Circumstances:* The applicants, 33 Bosnia and Herzegovina nationals, were victims of forced or compulsory labour and trafficking in human beings in Azerbaijan. *Relevant complaint:* Azerbaijan had failed to comply with its procedural obligation under the Convention to investigate the applicant's complaints that they had been victims of forced labour and human trafficking, that they had worked without contracts and work permits in Azerbaijan, they had their passports taken away and their freedom of movement restricted by their employer, and that their wages had not been paid starting from May 2009 and until their departure from Azerbaijan. *Court's conclusions:* Like Articles 2 and 3, Article 4 also entails a procedural obligation to investigate where there is a credible suspicion that an individual's rights under that Article have been violated. In addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories. In the context of positive obligations under Article 3 of the Convention, which are similar to those under Article 4 of the Convention, sufficiently detailed information contained in an inter-State legal-assistance request concerning alleged grave criminal offences which may have been committed on the territory of the State receiving the request may amount to an "arguable claim" raised before the authorities of that State, triggering its duty to investigate those allegations further. In so far as the Azerbaijani Anti Trafficking Department knew that many alleged victims had been sent back to Bosnia and Herzegovina and was informed about the criminal proceedings instituted in Bosnia and Herzegovina, it could have sent a formal legal-assistance request to the authorities of that country under the Mutual Assistance Convention, requesting the latter to identify and question such potential victims and to provide copies of their statements to the Azerbaijani law-enforcement authorities. *[paras. 185, 191, 198 and 206]*

Al Alo v. Slovakia No.: 32084/19 Type: Judgment Date: 10 February 2022 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (videoconference) Links: English only Translations: not available	*Circumstances:* Conviction in a criminal proceedings against a Syrian national in Slovakia based on evidence taken in the applicant's absence at the pre-trial stage when he had no legal representation from witnesses who were absent at the trial as they had been expelled from Slovakia. *Relevant complaint:* The applicant had not been provided with legal assistance at the early stages of the proceedings and his conviction had been essentially based on the pre-trial statements of C. and D., whom he had been unable to examine at trial. *Court's conclusions:* The reason why the courts considered the witnesses to be unreachable for the purposes of the applicant's trial was that they were living outside Slovakia, following their expulsion from that country, and that there were no grounds to expect that they would be motivated or allowed to come back to Slovakia to appear at the applicant's trial. The domestic courts reached this conclusion even though, in the course of the proceedings in respect of his appeal, the applicant provided them with addresses for these witnesses and with copies of their identity documents. The courts concluded that his doing so was not sufficient, as it had been his procedural duty to show that these witnesses would have been permitted to re-enter Slovakia. The Court notes that there is no indication that such a distribution of the burden of proof with regard to the possibility for a foreign witness to enter Slovakia for the purposes of giving evidence in court had any basis in statute or established practice. Moreover, the Court notes the possibility, to which the Government likewise in no manner responded, of securing the appearance of witnesses at trial via remote means under the Convention on Mutual Assistance in Criminal Matters between the member States of the European Union, which is applicable to all the States involved in the applicant's case. *[paras. 48 through 51]*
Shorazova v. Malta No.: 51853/19 Type: Judgment Date: 3 March 2022 Articles: Y: 1 (Prot. 1); N: 6§1 Keywords: – fair trial – mutual assistance (seizure of assets) Links: English only Translations: not available	*Circumstances:* Seizure of assets belonging to an Austrian national (born in Kazakhstan and widow of the former son-in-law of the former President of Kazakhstan Nazarbayev who, before his departure from Kazakhstan, occupiedvarious high ranking government positions in Kazakhstan) in Malta on the basis of a mutual assistance request by Kazakhstan (under Article 18 of the United Nations Convention Against Transnational Organised Crime) in connection with criminal proceedings ongoing in Kazakhstan against the applicant (and originally also against her husband) for alleged fraud and money laundering. The seizure of assets in Malta lasted from 2014 until 2021. *Relevant complaint:* The Maltese State's compliance with the request for legal assistance and the freezing order requested by the Kazakhstan authorities was not in compliance with the Convention since the requests stemmed from a regime that could not offer any guarantees of a fair trial. The applicant also particularly complained about the freezing order as well as its duration, which was based on politically motivated trumped up charges.

	Court's conclusions: It would appear that the freezing order issued and kept in place for nearly eight years had not been in accordance with the law ab initio since, according to the Criminal Court, the applicant did not have, and never had, the status of a charged or accused person in Kazakhstan, but only that of a suspect. The Court, however, observes that prior to that (besides the original order of the Criminal Court and subsequent renewals) other jurisdictions including the Court of Magistrates and the courts of constitutional competence – had repeatedly considered the applicant as a person charged or accused and confirmed the lawfulness of the measure. Indeed, this appears to have been compounded by the fact that the applicant and her husband requested to be considered as accused. In the absence of all the relevant documentation and detailed submissions on the matter, the Court will not take the place of the domestic courts to establish whether the order had originally been issued subject to the conditions provided for by law, inter alia, that the applicant be a person "charged or accused" in terms of Maltese law. However, the Court finds it disconcerting that in nearly eight years no authority or domestic court had thoroughly examined the matter in legal terms as well as ascertained the applicant's situation in the light of the available information – despite the Government's claim that they were in regular contact with the Kazakh authorities and the repetitive renewals of the order, as well as a constitutional challenge, during which the applicant highlighted that the courts had not distinguished between an investigated person and an accused person, which she considered she had become only months after the issuance of the order. The Court would generally respect the State's authorities' judgments as to what is in the general interest unless that judgment is without reasonable foundation. The same applies in the context of seizure of property, including bank accounts in the context of crime investigation. The material provided to the Court and the domestic courts are sufficient to consider that in the specific circumstances of the present case the applicant's deceased husband was an established political adversary to the Kazakh regime and could be the subject of reprisals on their part, including trumped up charges which may extend to the applicant. Certain findings of the Maltese domestic court, albeit at times contradictory, also acknowledge that situation. Thus, while a freezing order may in principle be in the general interest, whether there existed a general interest behind the freezing order which was put, and kept, in place by the Maltese authorities in the specific circumstances of the present case was something which deserved particular evaluation by the domestic courts. It is in such contexts that effective procedural safeguards become indispensable. Domestic courts have an obligation of review where there is a serious and substantiated complaint about a manifest deficiency in the protection of a European Convention right. Under the United Nations Convention Against Transnational Organised Crime mutual legal assistance may be refused, in particular, if the requested State Party considers that execution of the request is likely to prejudice ordre public or if

	it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted. In the present case, which concerned investigations in a jurisdiction other than that of the domestic courts of the Respondent State, and where there were sufficient grounds to question the genuine nature of the actions undertaken by that jurisdiction, the Maltese courts of constitutional competence proceeded to find that the measure pursued a general interest automatically and without a detailed assessment of the situation pertinent to the case. No other domestic court entered into that matter. In the absence of any such assessment, the Court cannot rubber stamp the domestic courts' findings. In the very specific circumstances of the present case, the Court has serious doubts about the general interest at play being the fight against crime. It is noted that the applicant has not been charged with money laundering in any European country (including Malta), despite investigations in, for example, Austria, Germany and Liechtenstein. The Court also has difficulty accepting that the freezing order was in the general interest because it aimed at securing an eventual confiscation of assets. This is so given that any such confiscation would result from criminal proceedings which, in view of the above materials, may, or are likely to consist of a flagrant denial of justice. Until 2021 – more than seven years after the issuance of the order – no assessment appears to have been made by the Criminal Court as to whether it would have been legitimate and proportionate to apply such a measure, given the circumstances of the case. Thus, at no stage before the Criminal Court had there been any judicial assessment of the credibility of the 'charges'. It would appear that, until 2021, the measure was extended automatically, without the applicant being heard. The parties are in disagreement about this factual point – the Government claimed that an oral hearing took place at every renewal and that in general by default the Criminal Court would lift the measure after six months, unless it considered otherwise; the applicant categorically denied that oral hearings took place, noting that she only received notification of the decisions stating that "the Attorney General's request was granted", and that the Criminal Court invariably accepted such extension requests. Given that the Government failed to substantiate this allegation by providing the minutes of such hearings or making any reference to the actual considerations made by the Criminal Court during such renewals, the Court finds it difficult to give credence to the Government's allegation, that any oral hearings took place before the applicant's request in December 2020, and the subsequent developments. *[paras. 107, 109 through 112, 117, 118 and 121]*
Yeğer v. Turkey No.: 4099/12 Type: Judgment Date: 7 June 2022	*Circumstances:* Conviction in absentia after not personally being served with documents concerning criminal proceedings (after failing to inform authorities of address change and going abroad for extended period of time), and inability to obtain fresh determination of merits of case.

Articles: Y: 5§1, 6§1 Keywords: – fair trial – in absentia – mutual assistance (service of documents) Links: English only Translations: Turkish	*Relevant complaint:* The applicant's right to a fair trial as provided in Article 6 of the Convention had been breached, as he had been tried and convicted without having been able to exercise his rights to be present and to defend himself in person. The applicant could not have lodged an appeal against his conviction *in absentia* within the statutory time-limit, simply because he had had no knowledge of it. However, as soon as he had been arrested, he had seized the first opportunity to inform the trial court of his situation and asked for a retrial, which had been unduly refused. *Court's conclusions:* The Government argued that the applicant had knowingly and willingly absconded from the proceedings and had thus waived his right to be present, because he had (i) moved out of his residential address on account of his debts; (ii) failed to inform the authorities of his address change; and (iii) gone abroad for an extended period of time. First of all, at no stage of the proceedings did the domestic courts assess those points, on which the Government relied before the Court to support their above-noted assertion. Secondly, while it is true that the building manager stated that the applicant had moved out of his apartment owing to issues related to his debts, it is not clear whether those debts were the same as those that formed the basis of the criminal proceedings against the applicant. Thirdly, even assuming that the applicant could potentially be reproached for failing to inform the authorities of his address, the Court considers that it would be too great a leap to attach to such a failure the rationale that the applicant was either aware of the criminal proceedings or intended to evade justice. Fourthly, the same consideration also holds true in respect of the mere fact of being abroad – a fact that was not contested by the applicant – which does not in and of itself suffice to provide an unequivocal indication in respect of the Government's argument. Given the absence of any objective factors allowing a conclusion to be drawn as regards the applicant's knowledge of the criminal proceedings, the Court cannot conclude that the applicant unequivocally waived his right to appear and defend himself or evaded justice. Neither the trial court nor the Istanbul Assize Court, the latter dismissing the applicant's objection, verified whether the applicant had indeed been informed of the criminal proceedings in person or had otherwise had effective knowledge thereof. In view of the above, the applicant, who was not shown to have had any knowledge of the criminal proceedings against him, was deprived of the possibility of obtaining a fresh determination of the merits of his case, a situation which is contrary to the elementary principles of the right to a fair trial under Article 6 of the Convention. *[paras. 32 and 34 through 36]*
De Legé v. the Netherlands No.: 58342/15 Type: Judgment Date: 4 October 2022	*Circumstances:* The case concerns the use of documents for the re-setting of a tax fine. Those documents relate to a foreign bank account and had been obtained from the applicant under threat of substantial penalty payments. In accordance with Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and

Articles: N: 6§1 Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (bank information) – rule of speciality Links: English only Translations: not available	Article 27 of the Tax Treaty between Belgium and the Netherlands, the Dutch Tax and Customs Administration in 2005 obtained from their Belgian counterparts information concerning bank accounts held by residents of the Netherlands with X Bank in Luxembourg that included balances of those accounts on 21 December 1994, 5 September 1996 and 28 November 1996. The account information had been stolen from the bank. It had been found in Belgium in the course of a criminal investigation. On the basis of that information, the Dutch Tax and Customs Administration identified the applicant as one of the account holders. Luxembourg had bank secrecy laws at the relevant time. These prevented the passage by lawful means of information relating to accounts held with banks based in that country to foreign tax authorities except with the cooperation of the account holders themselves. *Relevant complaint:* In breach of the privilege against self-incrimination, use had been made, in tax proceedings in which fines were imposed on the applicant, of documents which he had been ordered, by judgment, to provide under the threat of penalty payments and without having been given a guarantee that the ordered materials would only be used for the purpose of levying tax. *Court's conclusions:* No use had been made of the documents for the imposition of the tax fine. The domestic proceedings solely concerned the use of bank statements and portfolio summaries that had been drawn up by X Bank and related to an account of which the applicant had already been identified as an account holder. That being the case, no issue can arise as to a breach of the right not to incriminate oneself in relation to the forms submitted by the applicant. The Court has no doubt that these were pre-existing documents. The authorities were aware of their existence since it had already been established that the applicant had held a bank account in Luxembourg at the relevant time. It can therefore not be said that the authorities were engaging in a "fishing expedition" when they instituted summary injunction proceedings in order for the provisional measures judge to order the applicant to submit certain documents in relation to that account. The order subsequently issued by the provisional measures judge, moreover, specifically indicated what documents the applicant was to supply. In the circumstances of the present case, the use of the bank statements and portfolio summaries concerning the applicant's account with X bank that were obtained from him by a judicial order for disclosure on pain of penalty payments does not fall within the scope of the protection of the privilege against self-incrimination. *[paras. 81, 85 and 86]* *[NOTE: While the case does not directly concern mutual legal assistance in criminal matters, the Court's conclusion might be of relevance for cases of mutual legal assistance in criminal matters by analogy.]*

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 and 222)

Case Data	*Summary*
Drozd and Janousek v. France and Spain No.: 12747/87 Type: Judgment Date: 26 June 1992 Articles: N: 5§1, 6 Keywords: – fair trial – transfer of sentenced persons Links: English, French Translations: Slovenian, Spanish	*Circumstances:* Serving a sentence of imprisonment, imposed in Andorra, in France or Spain. *Relevant complaint:* The applicants claimed that their detention was contrary to French public policy (*ordre public*), of which the Convention formed part; the French courts had not carried out any review of the judgments of an Andorran court whose composition and procedure had not complied with the requirements of Article 6 of the Convention. *Court's conclusion:* As the Convention does not require the Contracting Parties to impose its standards on third States or territories, France was not obliged to verify whether the proceedings which resulted in the conviction were compatible with all the requirements of Article 6 of the Convention. To require such a review of the manner in which a court not bound by the Convention had applied the principles enshrined in Article 6 of the Convention would also thwart the current trend towards strengthening international cooperation in the administration of justice, a trend which is in principle in the interests of the persons concerned. The Contracting States are, however, obliged to refuse their co-operation if it emerges that the conviction is the result of a flagrant denial of justice. *[para. 110]*
Selmouni v. France No.: 25803/94 Type: Judgment [GC] Date: 28 July 1999 Articles: Y: 3, 6§1 Keywords: – transfer of sentenced persons Links: English, French Translations: Armenian, Georgian, Slovenian, Spanish Chamber Judgment: not available (case referred to the Grand Chamber in accordane with Article 5§5 of Protocol No. 11)	*Circumstances:* A Netherlands and Moroccan national serving a sentence of imprisonment in France. *Relevant complaint:* As part of his complaint concerning ill-treatment in the French prison, the applicant requested to be transferred to the Netherlands to serve the remainder by the sentence there. *Court's conclusions:* The Court reiterated that Article 41 of the Convention does not give it jurisdiction to make an order for transfer against a Contracting State. *[para. 126]*

Veermäe v. Finland No.: 38704/03 Type: Decision Date: 15 March 2005 Articles: N: 3, 5, 6, 14; 4 (Prot. 7) Keywords: – discrimination – expulsion – fair trial – ill-treatment – ne bis in idem – transfer of sentenced persons (Additional Protocol, Article 3) – transfer of sentenced persons (conversion of sentence) – transfer of sentenced persons (early release) Links: English, French Translations: not available	*Circumstances:* Transfer of an Estonian national from Finland to Estonia under Article 3 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons. *Relevant complaint:* The applicant argued that in Finland, it would be possible to be released on parole after serving half his sentence, while in Estonia release on parole would only be possible after serving two-thirds of the sentence. *Court's conclusions:* The Court examined of its on motion whether the application raises an issue under Article 6 of the Convention, as the relevant question is whether the transfer, with the risk of a de facto longer sentence, violates Article 5 of the Convention and whether the transfer arrangements require a procedure offering the guarantees of Article 6 of the Convention. The possibility of a longer period of imprisonment in the administering State does not in itself render the deprivation of liberty arbitrary as long as the sentence to be served does not exceed the sentence imposed in the criminal proceedings. A flagrantly longer de facto sentence in the administering State could nevertheless give rise to an issue under Article 5 of the Convention. However, in view of the information concerning the Estonian practice in converting sentences, according to which a penalty imposed in Estonia would be likely to be less severe than a penalty imposed in Finland, the Court considered that there were no substantial grounds for believing that the sentence to be served would be flagrantly disproportionate, if disproportionate at all. As the conversion of the sentence will be determined by a Finnish court, no issue arises under Article 6 of the Convention. *[pages 13 and 14]*
Csoszánszki v. Sweden No.: 22318/02 Type: Decision Date: 27 June 2006 Articles: N: 5, 6, 7 Keywords: – fair trial – nulla poena sine lege – transfer of sentenced persons (Additional Protocol, Article 3) – transfer of sentenced persons (conversion of sentence)	*Circumstances:* Transfer of a Hungarian national from Sweden to Hungary under Article 3 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons. After the transfer, the Budapest Regional Court converted the sentence into 10 years of imprisonment to be served in a strict prison regime (eligible for early release after 4/5 of the sentence). *Relevant complaint:* The transfer to Hungary resulted in a de facto increase in the term of imprisonment by sixteen-months. *Court's conclusions:* The likely additional period of detention of sixteen months in Hungary (corresponding to an increase of 20% but still well within the sentence imposed) is not so disproportionate that it will involve a breach of Article 5 of the Convention. While the applicant's transfer is likely to delay the date of his conditional release and may, as claimed by the applicant, subject him to harsher prison conditions, the Convention does not confer the right to such release or the right to serve a prison sentence in accordance with a particular regime. Nor does it require that parole decisions be taken by a court. Furthermore, questions of conditional release relate to the manner of implementation of a prison sentence.

– transfer of sentenced persons (early release) Links: English only Translations: not available	As a transfer is seen as a measure of execution of a sentence and the Convention on the Transfer of Sentenced Persons provides that the administering State may decide on the enforcement of the sentence in accordance with its own laws, Article 6 of the Convention is not applicable to transfer decisions. Even if the Additional Protocol to the Transfer Convention was not in force in Sweden at the time of the commission of the offence, under the terms of Article 7 of the Additional Protocol it was still applicable to any enforcement of the sentence taking place after its entry into force. Furthermore, transfer decisions cannot be considered as amounting to a "penalty" within the meaning of Article 7 of the Convention. *[pages 9, 11, 12 and 13]*
Passaris v. Greece No.: 53344/07 Type: Decision Date: 24 September 2009 Articles: N: 6§1, 13 Keywords: – fair trial – transfer of sentenced persons Links: French only Translations: Greek	*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 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]*
Garkavyy v. Ukraine No.: 25978/07 Type: Judgment Date: 18 February 2010 Articles: Y: 5§1 Keywords: – custody (lawfulness)	*Circumstances:* Ukrainian national, convicted and sentenced in the Czech Republic in absentia, was arrested in Ukraine on the basis of an international arrest warrant issued against him by the Czech Republic and remanded in custody for 40 days under Article 16 of the European Convention on Extradition. The Czech Republic did not request extradition but instead requested that Ukraine takes over criminal proceedings from the Czech Republic under Article 8(2) of the European Convention on the Transfer of Proceedings in Criminal Matters. Instead, Ukraine treated this request as a request under the European Convention on the International Validity of Criminal Judgments (without being asked to do so

– extradition (custody) – in absentia – transfer of enforcement of sentence – transfer of proceedings – transfer of sentenced persons (Additional Protocol, Article 2) Links: English only Translations: Ukraine	by the Czech Republic, even though the Czech Republic is not a State Party to it and even though Ukraine made a reservation to it excluding in absentia judgments) and further extended the applicant's custody under its Articles 32 and 33. Subsequently, Ukrainian courts attempted to apply the Convention on the Transfer of Sentenced Persons and recognize the in absentia judgment issued by Czech courts (again, without being asked to do so by the Czech Republic and even though the applicant did not consent to the transfer and had in fact already been present in Ukraine). Following that, the Ukrainian court decided to apply also Article 2 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons (again, without being asked to do so by the Czech Republic and even though the judgment was the result of an in absentia trial). *Relevant complaints:* 1. The applicant's detention with a view to extradition had been unlawful in terms of the relevant instruments, both national and international, since the Ukrainian Constitution and the Criminal Code unequivocally excluded the possibility of extraditing Ukrainian nationals. 2. The applicant's detention under on Articles 32 and 33 of the European Convention on the International Validity of Criminal Judgments had been unlawful, as that Convention was not applicable in relations between Ukraine and the Czech Republic, given that the latter was not a party to the Convention. His detention had actually been aimed at enforcement of the judgment rendered in absentia and was therefore contrary to Article 5§1 of the Convention. The recognition of the judgment of the Prague City Court by the Ukrainian court had been made without sufficient legal grounds and contrary to the international treaties to which the courts referred. Furthermore, at no stage of the proceedings was he able to defend himself and have a proper trial. *Court's conclusions:* 1. The applicant's detention was ordered for forty days by the Ukrainian court under the European Convention on Extradition, although being a Ukrainian national he could not be extradited, as the domestic legislation excludes, in non-ambiguous terms, the extradition of Ukrainian nationals. The Court considers that the facts of the case demonstrate that the applicant was detained during the period in question without sufficient legal basis in the domestic law. *[paras. 70 and 74]* 2. The Kyiv Court of Appeal, after examining the case, reclassified the request of the Czech authorities for transfer of criminal proceedings in the applicant's case under the European Convention on the Transfer of Proceedings in Criminal Matters to a request for enforcement of the judgment of the Prague City Court under the Convention on the Transfer of Sentenced Persons and the Protocol thereto, although no request under this Convention had been made and the provisions of the Protocol

	to this Convention were not applicable to persons tried in absentia. The Court is not convinced that such solution chosen by the domestic courts meets the requirements of foreseeability and lawfulness. *[paras. 76 and 77]*
Smith v. Germany No.: 27801/05 Type: Judgment Date: 1 April 2010 Articles: Y: 6§1 Keywords: – fair trial – right of access to court – transfer of sentenced persons Links: English only Translations: German	*Circumstances:* The applicant, a Dutch national, was convicted by the Lübeck Regional Court of drug offences and sentences to tree and a half year of imprisonment. He had voluntarily returned from the Netherlands to stand trial in Germany after the Lübeck Public Prosecutor gave the applicant an assurance that the prosecution service would institute proceedings under Article 11 of the Convention on the Transfer of Sentenced Persons. However, the German Ministry of Justice refrained from lodging a formal application with the Netherlands. *Relevant complaint:* The applicant complained under Article 6§1 of the Convention about the domestic authorities' refusal to institute transfer proceedings under Article 11 of the Transfer Convention, contrary to the previous assurance given by the Public Prosecutor. *Court's conclusions:* Article 6§1 of the Convention under its criminal head is, under the specific circumstances of the present case, applicable to the proceedings concerning the applicant's transfer request in so far as they relate to the assurance given by the public prosecution during the criminal proceedings. The decision taken by the Justice Ministry on the transfer request does not solely depend on the public prosecutor's recommendations and on considerations regarding the execution of sentence, but also on considerations of foreign policy which fall within the core area of public law. It is therefore acceptable if this part of the decision is not subject to judicial review. However, it has not been shown that there was a possibility of instituting an effective action for review of the refusal to institute proceedings after a relevant assurance. The applicant has been denied access to a court with regard to the part of the decision on his transfer request which did not concern considerations of public policy. *[paras. 43, 42, 61 and 62]*
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	*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

Links: English only Translations: Greek	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]*
Müller v. Czech Republic No.: 48058/09 Type: Decision Date: 6 September 2011 Articles: N: 7 Keywords: – transfer of sentenced persons (Additional Protocol, Article 3) Links: English only Translations: Czech	*Circumstances:* Transfer of a Czech national from Germany to the Czech Republic under Article 3 of the Additional Protocol. *Relevant complaints:* 1. Czech courts ordered the applicant to serve a sentence that was not envisioned in the Czech law for the crime he had committed. He argued that this penalty was not foreseeable for him because at the time he committed his offence transfer from Germany had not been possible without his consent as the Additional Protocol to the Transfer Convention had been concluded only after his acts. 2. The conditions of imprisonment of prisoners sentenced to life are harsher in the Czech Republic than in Germany. 3. Different rules on the possibility of release on parole. *Court's conclusions:* 1. A distinction is drawn between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of a "penalty"; Article 7 of the Convention applies only to the former. The applicant was tried and convicted in Germany to life imprisonment. The Czech courts only validated his conviction by the German courts and the High Court decided that the sentence could be enforced in the Czech Republic. Therefore, the Court does not consider that the Czech courts decided on a "criminal offence" committed by the applicant or that their decisions could

	be considered as measures imposed following conviction for a "criminal offence". The decision to enforce the judgment in the Czech Republic only concerns the place of the execution of the applicant's sentence. Consequently, the applicant's arguments that the application of the Additional Protocol to the Convention on the Transfer of Sentenced Persons was retroactive are not relevant. *[pages 6 and 7]* 2. The issue lies solely in the alleged differences in the conditions of detention in a prison. The penalty itself remains the same – that is a deprivation of liberty in a prison for a set term. The Court, therefore, considers that these alleged differences fall within the sphere of execution of a penalty and thus no issue arises under Article 7 of the Convention. *[page 8]* 3. A change in the conditions for release relates to the execution of sentence and Article 7 of the Convention is not applicable. *[page 7]*
Willcox and Hurford v. United Kingdom Nos.: 43759/10 & 43771/12 Type: Decision Date: 18 January 2013 Articles: N: 3, 5§1 Keywords: – fair trial – ill-treatment – transfer of sentenced persons Links: English, French Translations: Bosnian, Bulgarian, Hungarian, Montenegrin, Turkish, Ukrainian	*Circumstances:* Transfer of two sentenced persons from the Thailand to the United Kingdom. *Relevant complaints:* 1. The applicants contended that their sentences were grossly disproportionate and that the continued enforcement of the sentences by the United Kingdom violated their rights under Article 3 of the Convention. Extraneous objectives, albeit legitimate or even laudable, did not affect the absolute nature of Article 3. The fact that the sentence was imposed in Thailand was not relevant to the assessment of whether there was a violation: once a sentence was deemed grossly disproportionate, it could not be saved by deference to an alternative sentencing context. It applied in an absolute way in the context of transferred prisoners. Their sentences imposed in Thailand and enforced in the United Kingdom were four to five times as long as the sentences which they would likely have received had they been convicted of the same offences in the United Kingdom. Their continued detention no longer served a legitimate penological purpose, having regard to the time that they had already spent in detention. 2. The applicants complained that their continued detention was arbitrary as, had they pleaded not guilty, they would have ended up serving less time in prison. 3. The first applicant also argued that an "irrebuttable presumption" was applied in his case which rendered his trial flagrantly unfair, such that his continued detention in the United Kingdom was arbitrary. *Court's conclusions:* 1. Different considerations arise in cases in which a Contracting State is asked to refuse extradition to a jurisdiction where a grossly disproportionate sentence might be imposed; and in cases where that

	same State is confronted with a request by a prisoner for transfer to serve a sentence imposed by a foreign court that might have been considered grossly disproportionate had it been assessed in the context of a prior extradition request. In the former case, it is within the State's power to prevent the offending sentence being imposed. In the latter, the sentence has been imposed and might have to be served in harsh and degrading conditions, subject to limited early release provisions. When considering the degree of humiliation or suffering inherent in the impugned acts, it is necessary to have regard to the degree of humiliation or suffering inherent in the alternative option. It would in the Court's view be paradoxical, and anathema to its obligation to interpret and apply the Convention rights in a manner that renders the guarantees practical and effective and not theoretical and illusory, if the protection afforded by Article 3 operated to prevent prisoners being transferred to serve their sentences in more humane conditions. A sentence cannot be deemed grossly disproportionate simply because it is more severe than the sentence which would be imposed in another State. It is clear that both applicants expressly consented to the transfer, having been advised of the consequences of doing so in terms of length of the sentences that they would have to serve and their inability to challenge the convictions or sentences imposed. *[paras. 75, 78 and 79]* 2. In the present case it seems likely that had life sentences been imposed on the applicants in Thailand and not been converted to determinate sentences by royal amnesty prior to their transfers, the applicants would have benefited from a significantly reduced period of detention after transfer to the United Kingdom because the High Court would have fixed a relatively short minimum term. However, the difference in outcome does not arise from the arbitrary application of different rules to different prisoners. Clear rules, set out in the applicable prisoner transfer agreement and in the 1984 and 2003 Acts, are applied prisoner transfer cases, and were applied in the applicants' cases. That different outcomes may occur is the result of the interaction between the law of the transferring State on sentencing and the practice of the receiving State on transfer. Such differences are inherent in any prison transfer arrangements, which are essentially based on the principle that the sentence imposed by the transferring State will be enforced by the receiving State. The Court reiterates that the applicants consented to their transfers, in the knowledge of what that entailed in terms of the time they would be required to serve in detention, doubtless to enjoy the many benefits attached to the enforcement of their sentences in the United Kingdom, including more favourable rules on early release and better conditions of detention. *[para. 91]* 3. As the Convention does not require Contracting States to impose its standards on third countries, the requirement of Article 5§1(a) that a person be lawfully detained after "conviction by a competent

	court" does not imply that the Court has to subject proceedings in third countries leading to that conviction to a comprehensive scrutiny and verify whether they have fully complied with all the requirements of Article 6 of the Convention. While the applicant's defence rights were restricted by the operation of the "irrebuttable presumption" in his case, it cannot be said that the very essence of his right to a fair trial was destroyed. Having regard to all the circumstances of the case, the Court considers that the applicant has failed to demonstrate that there has been a flagrant denial of justice in his case. The question in the present case is whether the "irrebuttable presumption" in Thai law led to a breach of Article 6 of the Convention which was so fundamental as to amount to a nullification, or destruction of the very essence, of the applicant's right to a fair trial. In this regard, the Court observes that presumptions of fact or of law operate in every legal system and that the Convention does not prohibit such presumptions in principle. *[paras. 94, 96 and 98]*
Serce v. Romania No.: 35049/08 Type: Judgment Date: 30 June 2015 Articles: Y: 3; N: 8 Keywords: – family life (separation of family) – transfer of sentenced persons Links: English only Translations: not available	*See the summary of the similar case of Plepi v. Albania and Greece.*
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]*
Zhernin v. Poland No.: 2669/13 Type: Decision Date: 25 September 2018 Articles: N: 6, 8 Keywords: – fair trial – family life (separation of family) – transfer of sentenced persons Links: English only Translations: not available	*Circumstances:* Denial of transfer of an Ukrainian national from Poland to Ukraine. *Relevant complaints:* 1. The applicant should be allowed to serve the remainder of his sentence in Ukraine, where all his family live, as the costs and effort of travel from his home town to the place of his detention in Poland made it difficult for his mother, sister and fiancée to visit him. That difficulty would not be significantly lower if he were transferred to another prison closer to the Polish-Ukrainian border as transport connections could be worse than in the case of the prison in Warsaw where he had recently been detained. Detaining the applicant in a facility far from his family might amount to interference with his family life. 2. The procedure by which the Minister of Justice of Poland decided on his transfer, without any possibility to appeal, had been arbitrary and in breach of Article 6 of the Convention. In spite of the positive decision of a court and his multiple requests, the minister had arbitrarily objected to his transfer to Ukraine. *Court's conclusions:* 1. Placing a person who has been convicted in a particular prison may potentially raise an issue under Article 8 of the Convention if the effect on the applicant's private and family life goes beyond the "normal" hardships and restrictions inherent to the very concept of imprisonment. The right to respect for family life imposes upon states a positive obligation to assist prisoners in maintaining effective contact with their close family members. However, the applicant did not claim that the Polish authorities had been limiting his right to family visits. Indeed there is no evidence of a single refusal of a family visit during the applicant's imprisonment. The applicant argued that the rarity of family visits had been caused by the distance between his home town in Ukraine and the prison in Poland. While such travel clearly entailed costs and effort on the part of the applicant's family, there was no evidence that these had been excessive or prohibitive. A Schengen area visa was necessary to cross the Ukrainian-Polish border, however, the applicant had not submitted that his family had been

	refused one. Given the large margin of appreciation granted to the authorities in such matters, and in the light of the reasons provided by them for the refusals to transfer the applicant to Ukraine, the result of the instant case cannot be considered incompatible with the respect for the applicant's private and family live. *[paras. 29 through 32]* 2. Neither the Transfer Convention nor its Additional Protocol stipulates that proceedings relating to a transfer should meet the requirements of Article 6 of the Convention. The decision taken by the Minister of Justice on the transfer request does not solely depend on the domestic court's recommendations and on considerations regarding the execution of sentence, but also on considerations of foreign policy which fall within the core area of public law. It is therefore acceptable if those decisions are not subject to judicial review. *[paras. 25 and 26]*
Makuchyan and Minasyan v. Azerbaijan and Hungary No.: 17247/13 Type: Judgment Date: 26 May 2020 Articles: Y: 2 (procedural aspect; by Azerbaijan), 14 (; by Azerbaijan); N: 2 (substantive aspect; by Azerbaijan), 2 (procedural aspect; by Hungary) Keywords: – assurances – right to life (procedural aspect) – transfer of sentenced persons (early release) Links: English only Translations: Romanian	*Circumstances:* Transfer of a sentenced person (R.S.), an Azerbaijani national convicted for murder of an Armenian national (G.M.) and preparation of murder of the first applicant (also an Armenian national) and sentenced to life imprisonment, with a possibility of conditional release after 30 years, from Hungary to Azerbaijan. On R.S.'s arrival to Azerbaijan, he was granted person pardon by the President of Azerbaijan, promoted to the rank of major by the Minister of the Defence during the course of a public ceremony and provided use of a flat belonging to the State housing fund and also awarded eight years (i.e. the time spent serving the sentence of imprisonment in Hungary) of salary arrears. The second applicant was G.M.'s uncle. *Relevant complaints:* 1. In subverting the Hungarian court's judgment and by acting in a way that had been motivated by political grounds entirely extraneous to the criminal justice process, the Azerbaijani Government had obviously failed to comply with their positive obligations under Article 2 of the Convention. To protect life and prevent impunity for life-endangering offences, in the present case, had required the Azerbaijani authorities to uphold and respect – and to be seen to uphold and respect – the Hungarian courts' conviction of and sentence imposed on R.S. The effect of the exercise of the President's discretion to issue a pardon had therefore been to lessen the consequences of a serious criminal act rather than to show that such acts could in no way be tolerated. Rather than being promoted and receiving other benefits, R.S. should have been dismissed from the military. The "humanitarian reasons" for the pardon given by the Azerbaijani Government had not been substantiated. Accordingly, there had been a "manifest disproportion" between the gravity of the act in question and the punishment that had been implemented, depriving the criminal prosecution of any remedial effect. In pardoning R.S., the Azerbaijani Government had acted in breach of the Transfer Convention. While

	the Transfer Convention made reference to the possibility of prisoners being pardoned (Article 12), the Convention was explicit that the purpose of transferring prisoners was so that they could then serve in the administering State the sentences imposed on them by the sentencing State. Under the Vienna Convention on the Law of Treaties, any interpretation of the Transfer Convention "in good faith" and "in the light of its object and purpose" could only lead to the conclusion that it had been breached by the actions of the Azerbaijani Government in the case. Those arguments were supported and strengthened by many statements issued by governments and international agencies in response to the transfer of R.S. in August 2012. The applicants also pointed out Azerbaijan's declaration in respect of the Transfer Convention to the effect that any decisions in relation to pardons or amnesties concerning prisoners transferred by Azerbaijan would have to be agreed with the Azerbaijani authorities. To apply such a principle in the present case would have required the Azerbaijani authorities to have obtained the prior agreement of the Hungarian authorities to pardoning R.S., which they had not. 2. Hungary had violated Article 2 of the Convention by granting the request for R.S.'s transfer without obtaining adequate binding assurances to the effect that he would be required to complete his prison sentence in Azerbaijan. The disclosed correspondence between the respondent Governments showed that no such assurances had been sought. Furthermore, a letter from the Azerbaijani Ministry of Justice dated 15 August 2012 to the Hungarian Ministry of Public Administration and Justice appeared to have been written in general terms, setting out applicable domestic law. It did not state, in specific terms, how it was proposed that R.S. would be dealt with following his transfer. The Hungarian authorities had been aware of the highly politically-charged nature of R.S.'s case, not least given R.S.'s admission in the course of the criminal proceedings that his motives had been related to the Nagorno-Karabakh conflict. The Hungarian Government should have been aware that if R.S. were to be transferred to Azerbaijan his sentence would almost certainly be terminated and he would be released, because the Azerbaijani public deemed the case to concern an "honourable murder". The Hungarian authorities knew or ought to have known that the Azerbaijani authorities would release R.S. on his return. The applicants referred to statements made by Hungarian high public officials and allegations reported in the media that the Hungarian Government had been aware of the possible outcome following the transfer and had allowed it to go ahead in order for Hungary to be able to sell government bonds to Azerbaijan. Further, taking into account the statements made by Azerbaijani officials in support of R.S. before his transfer, the consequences of the transfer could have clearly been anticipated. The decision to transfer R.S. appeared to have been made by the Minister of Justice

	without the involvement of any judge, court or prosecutor, or any other independent process of scrutiny or accountability. The Hungarian Government had not demonstrated that the domestic law had required the Minister to take account of relevant factors or to ignore irrelevant ones. Accordingly, there was an insufficient domestic legislative framework in place to regulate the transfer of sentenced prisoners in order to avoid arbitrariness or abuse of process. The applicants had been neither consulted nor informed about the decision taken by the Hungarian authorities to transfer R.S. to Azerbaijan. The fact that a State was a member of the Council of Europe did not constitute grounds for presuming that it would behave in line with its international obligations. *Court's conclusions:* 1. There is insufficient evidence that any procedural omission – if indeed there had been one – was not subsequently offset by procedural safeguards or that such an omission rendered the entire proceedings against him unfair. In any event, had R.S. considered his trial unfair, he could have lodged an application under Article 6 with the Court against Hungary once the criminal proceedings against him had come to an end, but he failed to do so. The remaining reasons relied on by the Azerbaijani Government, such as the personal history and mental difficulties of R.S. – as understandable as they may be – could hardly be sufficient to justify the failure of the Azerbaijani authorities to enforce the punishment pronounced against one of their citizens for a serious hate crime committed abroad. In particular, R.S.'s mental capacities had been thoroughly assessed during his trial in Hungary by a number of medical experts and that he was found to have been mentally able to understand the dangers and consequences of his actions at the time of the offences. The subsequent decision by the Azerbaijani authorities to promote R.S. to a higher military rank would clearly suggest that he was deemed fit to continue to serve in the military and therefore did not suffer from a serious mental condition. Quite apart from his pardon, the Court is particularly struck by the fact that, in addition to immediate release, upon his return to Azerbaijan R.S. was granted a number of other benefits, such as salary arrears for the period spent in prison, a flat in Baku and a promotion in military rank awarded at a public ceremony. The Azerbaijani Government did not provide any explanation as to why R.S. had been granted those benefits, nor did they indicate the legal basis for such actions apart from citing the applicable regulation on military promotion. Indeed, at least the salary arrears appear not to have had a legal basis in the Code of Criminal Procedure, which allows for such a measure only in cases where an individual had been acquitted or wrongfully convicted. The foregoing – taken as a whole – indicates that R.S. was treated as an innocent or wrongfully convicted person and bestowed with benefits that appear not to have had any legal basis under domestic law. As a matter of principle, it

	would be wholly inappropriate and would send a wrong signal to the public if the perpetrator of very serious crimes such as those in the present case were to maintain his or her eligibility for holding public office in the future. As already stated, in the present case not only did R.S. remain eligible for public office, but he was also promoted to a higher military rank in a public ceremony. In view of the foregoing, the acts of Azerbaijan in effect granted R.S. impunity for the crimes committed against his Armenian victims. This is not compatible with Azerbaijan's obligation under Article 2 of the Convention to effectively deter the commission of offences against the lives of individuals. *[paras. 167 through 172]* 2. The Hungarian authorities followed the procedure set out in the Transfer Convention in its entirety. In particular, they requested the Azerbaijani authorities to specify which procedure would be followed in the event of R.S.'s return to his home country. Although the reply of the Azerbaijani authorities was admittedly incomplete and worded in general terms – which in turn could have aroused suspicion as to the manner of the execution of R.S.'s prison sentence and prompted them to further action, as concluded by the Hungarian Commissioner for Fundamental Rights – no tangible evidence has been adduced before the Court by the parties in the present case to show that the Hungarian authorities unequivocally were or should have been aware that R.S. would be released upon his return to Azerbaijan. Indeed, bearing in mind particularly the time already served by R.S. in a Hungarian prison, the Court does not see how the competent Hungarian bodies could have done anything more than respect the procedure and the spirit of the Transfer Convention and proceed on the assumption that another Council of Europe member State would act in good faith. *[para. 196]*
Kupinskyy v. Ukraine No.: 5084/18 Type: Judgment Date: 10 November 2022 Articles: Y: 3, 7 Keywords: – ill-treatment – life sentence – transfer of sentenced persons (Additional Protocol, Article 3) – transfer of sentenced persons (conversion of sentence)	*Circumstances:* Transfer of a Ukrainian national, sentenced in 2002 in Hungary to life imprisonment with the possibility of release on parole after serving twenty years of imprisonment, from Hungary to Ukraine to serve his sentence under the Additional Protocol to the 1983 Convention. The applicant was transferred in 2007. The Ukrainian courts, when recognizing the Hungarian sentence, decided that the punishment to be served in Ukraine was life imprisonment without forfeiture of property and with the possibility of seeking release on parole after serving twenty years. In 2016 and subsequent years, the applicant's petition to be release on parole was denied by Ukrainians courts referring, *inter alia*, to Ukrainian domestic law that did not provide for release on parole or commutation of the remainder of the sentence for life prisoners. *Relevant complaints:* 1. The applicant's irreducible life sentence was incompatible with Article 3 of the Convention.

– transfer of sentenced persons (early release) Links: English only Translations: Ukrainian	2. Although the Hungarian courts had sentenced the applicant to a reducible life sentence, the Ukrainian courts had converted that sentence into what turned out to be a *de facto* irreducible life sentence, which was a heavier penalty, in violation of Article 7 of the Convention. The Ukrainian courrts misled the applicant by indicating in their decisions of 2007 that his life sentence was reducible, and that he had a possibility of seeking release on parole after twenty years of prison service. *Court's conclusions:* 1. It is clear from the judgments of the Ukrainian courts that the applicant's sentence is considered irreducible under current Ukrainian law. It is true that the Constitutional Court of Ukraine in its judgment of 16 September 2021 declared the provision on release on parole in Article 81 of the Criminal Code unconstitutional in so far as it did not apply to life prisoners. However, the procedure and manner of the application of the rule on release on parole to life prisoners has not yet been established, and in the absence of such rules and procedure the domestic courts considered that they had no jurisdiction to decide on the release on parole of life prisoners, which was reflected in the judgment of the Grand Chamber of the Supreme Court in the case of Mr Petukhov. The applicant's situation has therefore not changed for the purposes of Article 3 with the adoption of the judgment of the Constitutional Court of 16 September 2021 taken alone; a judgment, which moreover, was delivered over three years after the introduction of his application and after the refusal of numerous release requests. Thus, the Court's reasoning in Petukhov (no. 2) (case No. 41216/13) is equally pertinent to the present case. *[paras. 41 and 42]* 2. The penalty "that was applicable at the time the criminal offence was committed", within the meaning of Article 7, was reducible life sentence. The domestic authorities, by denying the applicant the real possibility of seeking release on parole, confirmed that they converted his original reducible sentence into a *de facto* and *de jure* irreducible life sentence and thus changed the scope of the original punishment to the applicant's detriment, by imposing a heavier penalty. Therefore, there has been a violation of Article 7 of the Convention. *[para. 64]*

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

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

	Court's conclusions: The detention of the applicant from 15 May 2002 onwards was contrary to Article 5§1 of the Convention, as the Supreme and Constitutional Courts confined themselves to considering that the "old" provision of Article 514 CCP was inadequate and that a legal basis could be provided by the generally recognised norms of international law in accordance with the principle of good will and reciprocity. The courts referred to the European Convention on the Internationals Validity of Criminal Judgments which, however, was not in force in respect of either country at the material time. The legal basis found by the Supreme Court can therefore scarcely be said to meet the qualitative components of the "lawfulness" requirement as regards the applicant's detention and the conversion of the sentence imposed by the Italian courts. *[paras. 157 and 160]*
Garkavyy v. Ukraine	*See List D*

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

Case Data	*Summary*
Grori v. Albania	*See List E*
Garkavyy v. Ukraine	*See List D*
Güzelyurtlu and Others v. Cyprus and Turkey	*See List B*

G. The HUDOC database

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- that under "Language", both English and French are ticked off (some judgments and decisions are in French version only or in English version only).

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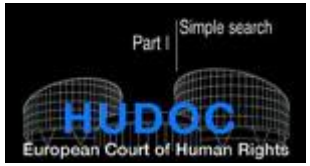

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