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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

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

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IMPORTANT NOTES:

- *The following index and summaries of cases have been prepared by PC-OC members 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:

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[1]) These Conventions include in particular: CETS Nos. 24 (Extradition and Additional Protocols ETS Nos. 86, 98 and 209), 30 (Mutual assistance in criminal matters and Additional Protocols ETS Nos. 99 and 182), 51 (Supervision of conditionally sentenced or conditionally released offenders), 70 (International validity of criminal judgments), 73 (Transfer of criminal proceedings), 112 (Transfer of sentenced persons and its Additional Protocol ETS No. 167).
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[3]) Keyword “expulsion” includes also other forms of deportation, such as refusal to renew residence permit.

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	N. v. Finland	38885/02
	Nasri v. France	19465/92
	Samsonnikov v. Estonia	52178/10
	Shakurov v. Russia	55822/10
hearing witnesses – see *mutual assistance (hearing witnesses)*		
ill-treatment[4]	Abdolkhani and Karimnia v. Turkey (No. 1)	30471/08
	Abdulazhon Isakov v. Russia	14049/08
	Abdulkhakov v. Russia	14743/11
	Abu Salem v. Portugal	26844/04
	Ahorugeze v. Sweden	37075/09
	Al Hanchi v. Bosnia and Herzegovina	48205/09
	Al Husin v. Bosnia and Herzegovina	3727/08
	Al-Moayad v. Germany	35865/03
	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

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

	Baysakov and others v. Ukraine	54131/08
	Ben Khemais v. Italy	246/07
	Chahal v. United Kingdom [GC]	22414/93
	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
	Dzhaksybergenov (aka Jaxybergenov) v. Ukraine	12343/10
	E.G.M. v. Luxembourg	24015/94
	Einhorn v. France	71555/01
	Elmuratov v. Russia	66317/09
	F. N. and Others v. Sweden	28774/09
	Gäfgen v. Germany [GC]	22978/05
	Gaforov v. Russia	25404/09
	Garabayev v. Russia	38411/02
	Gasayev v. Spain	48514/06
	Harkins and Edwards v. United Kingdom	9146/07 & 32650/07
	Hirsi Jamaa and Others v. Italy [GC]	27765/09
	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. and Others v. Sweden	59166/12
	K. v. Russia	69235/11
	Kaboulov v. Ukraine	41015/04
	Keshmiri v. Turkey	36370/08

	Khaydarov v. Russia	21055/09
	Khodzhayev v. Russia	52466/08
	Khudyakova v. Russia	13476/04
	King v. United Kingdom	9742/07
	Klein v. Russia	24268/08
	Kolesnik v. Russia	26876/08
	Kozhayev v. Russia	60045/10
	Labsi v. Slovakia	33809/08
	Lynas v. Switzerland	7317/75
	Mamatkulov and Askarov v. Turkey [GC]	46827/99 & 46951/99
	Mannai v. Italy	9961/10
	M. S. v. Belgium	50012/08
	Müslim v. Turkey	53566/99
	N. v. Finland	38885/02
	Nivette v. France	44190/98
	O. v. Italy	37257/06
	Oleacha Cahuas v. Spain	24668/03
	Othman (Abu Qatada) v. United Kingdom	8139/09
	Peñafiel Salgado v. Spain	65964/01
	Rafaa v. France	25393/10
	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
	Samaras and others v. Greece	11463/09
	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

	S. H. H. v. United Kingdom	60367/10
	Sidikovy v. Russia	73455/11
	Soering v. United Kingdom	14038/88
	Soldatenko v. Ukraine	2440/07
	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
	Toumi v. Italy	25716/09
	Trabelsi v. Belgium	140/10
	Trabelsi v. Italy	50163/08
	Umirov v. Russia	17455/11
	Veermäe v. Finland	38704/03
	Vilvarajah and others v. United Kingdom	13163/87 & 13164/87 & 13165/87 & 13447/87 & 13448/87
	Willcox and Hurford v. United Kingdom	43759/10 & 43771/12
	X. v. Austria and Yugoslavia	2143/64
	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)*		
impunity granted	Nasr and Ghali v. Italy (Abu Omar)	44883/09
in absentia	Bozano v. Switzerland	9009/80
	Einhorn v. France	71555/01
	Garkavyy v. Ukraine	25978/07
	Klein v. Russia	24268/08
	Labsi v. Slovakia	33809/08
	Somogyi v. Italy	67972/01
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
	Cruz Varas v. Sweden	15576/89
	Khodzhayev v. Russia	52466/08
	Labsi v. Slovakia	33809/08
	Lynas v. Switzerland	7317/75
	Mamatkulov and Askarov v. Turkey [GC]	46827/99 & 46951/99
	Mannai v. Italy	9961/10
	Molotchko v. Ukraine	12275/10
	Oleacha Cahuas v. Spain	24668/03
	Rrapo v. Albania	58555/10
	Shamayev and others v. Georgia and Russia	36378/02
	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*		
lack of effective remedies	Nasr and Ghali v. Italy (Abu Omar)	44883/09
lawfulness of custody – see *custody (lawfulness)*		
length of custody – see *custody (length)*		
life sentence[5]	Abu Salem v. Portugal	26844/04
	Babar Ahmad and others v. United Kingdom (Decision)	24027/07, 11949/08 & 36742/08

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

	Babar Ahmad and Others v. United Kingdom (Judgment)	66911/09 & 67354/09
	Einhorn v. France	71555/01
	Harkins and Edwards v. United Kingdom	9146/07 & 32650/07
	Kafkaris v. Cyprus [GC]	21906/04
	Nivette v. France	44190/98
	Oleacha Cahuas v. Spain	24668/03
	Rushing v. The Netherlands	3325/10
	Trabelsi v. Belgium	140/10
	Vinter and others v. United Kingdom [GC]	66069/09 & 130/10 & 3896/10
mutual assistance	Rantsev v. Cyprus and Russia	25965/04
mutual assistance (admissibility of evidence)	A. M. v. Italy	37019/97
	Solakov v. FYROM	47023/99
	Van Ingen v. Belgium	9987/03
	Zhukovskiy v. Ukraine	31240/03
mutual assistance (hearing witnesses)	Adamov v. Switzerland	3052/06
	A. M. v. Italy	37019/97
	Fąfrowicz v. Poland	43609/07
	Kostecki v. Poland	14932/09
	Marcello Viola v. Italy	45106/04
	Damir Sibgatullin v. Russia	1413/05
	Solakov v. FYROM	47023/99
	Stojkovic v. France and Belgium	25303/08
	Tseber v. Czech Republic	46203/08
	Zhukovskiy v. Ukraine	31240/03
mutual assistance (service of documents)	Fąfrowicz v. Poland	43609/07
	Damir Sibgatullin v. Russia	1413/05
	Somogyi v. Italy	67972/01
mutual assistance (videoconference)	Marcello Viola v. Italy	45106/04
nationality	Abdulazhon Isakov v. Russia	14049/08
ne bis in idem	E.G.M. v. Luxembourg	24015/94

	Trabelsi v. Belgium	140/10
	Veermäe v. Finland	38704/03
non bis in idem – see *ne bis in idem*		
nulla poena sine lege	Csoszánszki v. Sweden	22318/02
obligation to investigate – see *obligation to prosecute*		
obligation to prosecute[6]	Rantsev v. Cyprus and Russia	25965/04
parole – see *transfer of sentenced persons (early release)*		
presumption of innocence	Ismoilov and others v. Russia	2947/06
refugee – see *asylum*		
relation between extradition and deportation or expulsion	Bozano v. Switzerland	9009/80
	Öcalan v. Turkey [GC]	46221/99
	Ramirez Sanchez v. France	28780/95
	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 defence	E.G.M. v. Luxembourg	24015/94
	Sardinas Albo v. Italy	56271/00
right to life	Peñafiel Salgado v. Spain	65964/01
right to respect for private and family life	Peñafiel Salgado v. Spain	65964/01
rule of speciality	Abu Salem v. Portugal	26844/04
	Woolley v. United Kingdom	28019/10
	Zarmayev v. Belgium	35/10
separation of family – see *family life (separation of family)*		
service of documents – see *mutual assistance (service of documents)*		
speciality – see *rule of speciality*		
torture – see *ill-treatment*		
transfer of enforcement of sentence[7]	Garkavyy v. Ukraine	25978/07

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

	Grori v. Albania	25336/04
transfer of proceedings	Garkavyy v. Ukraine	25978/07
	Grori v. Albania	25336/04
transfer of sentenced persons	Drozd and Janousek v. France and Spain	12747/87
	Selmouni v. France [GC]	25803/94
	Smith v. Germany	27801/05
	Willcox and Hurford v. United Kingdom	43759/10 & 43771/12
transfer of sentenced persons (Additional Protocol, Article 2)	Garkavyy v. Ukraine	25978/07
transfer of sentenced persons (Additional Protocol, Article 3)	Csoszánszki v. Sweden	22318/02
	Müller v. Czech Republic	48058/09
	Veermäe v. Finland	38704/03
transfer of sentenced persons (conversion of sentence)	Csoszánszki v. Sweden	22318/02
	Veermäe v. Finland	38704/03
transfer of sentenced persons (early release)	Csoszánszki v. Sweden	22318/02
	Veermäe v. Finland	38704/03
videoconference – see *mutual assistance (videoconference)*		
witness immunity – see *mutual assistance (hearing witnesses)*		

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

Case Data	*Summary*
X. v. Austria and Yugoslavia No.: 2143/64 Comm. Type: Decision Date: 30.06.1964 Articles: N: 3, 5§1, 27§2 Keywords: – Extradition (procedure) – Asylum – Custody (lawfulness) – Torture Links: French Translations: not available	*Circumstances:* The applicant, a Yugoslavian national, indicted for having stolen money from a state-owned company which he had directed, was sentenced to a nine-year imprisonment. He fled from Yugoslavia to Austria, where he filed an asylum claim and never received an answer. The Yugoslavian Government called for the claimant's extradition and he was ultimately detained. *Relevant complaint:* The applicant alleged the violation of the Articles 3 and 5 of the Convention, claiming that he was the victim of cruel and inhuman treatment pending his arrest and that there had been a violation of his right to defence. *Commission's conclusions:* the Commission declared the complaint against Yugoslavia inadmissible, observing that this State had signed and ratified the Convention but had not at that time recognised the competence of the Commission to receive applications lodged by individuals under Article 25. It further concluded that the complaint about the alleged violations was ungrounded. The Commission highlighted in particular the lawfulness of the Austrian pre-extradition detention. It did not find any evidence of the alleged inhuman or degrading treatment, in violation of the Article 3 of the Convention.
K v. Italy and Federal Republic of Germany No.: 5078/71 Comm. Type: Partial Décision 14.12.1972 Type: Decision Date: 15.12.1983 Articles: N: 6§1and §1,8§1, 5§3, Keywords: – Extradition (procedure) – Fair trial Links: English, Translations: not	*Circumstances:* The applicant, a German national detained in prison in Hamburg was involved in two cases of alleged fraud and usury which occurred in 1963/64 and 1970 respectively. The first case concerns a firm in Hamburg, which undertook to assist debtors in the liquidation of their debts. After four months' detention he was released in 1964. In 1966 he was again arrested and detained for two months. In 1969 he was permitted to leave the country; he moved to Liechtenstein. Following a new warrant of arrest in Liechtenstein he escaped to Panama, fleeing via Italy and the United Kingdom in October 1970. A picture of the applicant was shown and a reward of 2,000 DM was offered for information leading to his arrest. In February 1971 he was arrested at Trieste in Italy. For the first case he was lately extradited by Switzerland to the Federal Republic of Germany in December 1973. With regard to the second case of alleged fraud, the applicant states that, while in Liechtenstein, he was employed by an American corporation. Early in the 1970 this corporation established a new company; the German public prosecutor qualified the prospectus issued by the company as fraudulent and opened a new investigation against the applicant. In March 1971 the Federal Republic of Germany requested the applicant's extradition from Italy referring to the other two cases. The request was accepted (the Court of Cassation rejected, in the meantime, the

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

– extradition (custody) – extradition (documents in support of) – fair trial – ill-treatment – interim measure Links: English, French Translations: not available	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 Comm. No.: 10227/82 Type: Decision Date: 15.12.1983 Articles: N: 6§1 Keywords: – Extradition (procedure) – Fair trial Links: English, French Translations: not available	*Circumstances:* The applicant, an American citizen, was arrested in Spain and sought by the United States. The extradition was authorised by the Audiencia Nacional. *Relevant complaint:* The applicant complained of having had inadequate legal representation and interpretation before the Audiencia Nacional, contrary to art. 6§1. *Commission's conclusions:* In the Commission's view, the word 'determination' involves the full process of the examination of an individual's guilt or innocence of an offence, and not the mere process of determining whether a person can be extradited to another country. The complaint was *ratione materiae* incompatible with art. 6§1.
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)	*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

– extradition (custody) Links: English, French Translations: not available	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 – relation between extradition and deportation or expulsion Links: English, French Translations: not available	*Circumstances:* Refusal of extradition from France to Italy for the purposes of enforcement of a sentence imposed in absentia. Instead, the applicant was expelled from France to Switzerland where he was arrested for the purposes of his extradition from Switzerland to Italy. *Relevant complaint:* Unlawfulness of arrest in Switzerland after the applicant's expulsion from France as the co-operation between French and Swiss authorities to arrest him was designed to circumvent the French authorities' refusal of his extradition to Italy. *Commission's conclusion:* A person's arrest for the purposes of extradition proceedings following expulsion from a third State that refused to extradite the to the requesting State does not violate the Convention if it was done in accordance with domestic law and not arbitrarily. *[pages 69 and 70]*
Sanchez-Reisse v. Switzerland No.: 9862/82 Type: Judgment Date: 21 October 1986 Articles: Y: 5§4 Keywords: – custody (judicial review) – extradition (custody) Links: English, French Translations: Bulgarian	*Circumstances:* Extradition from Switzerland to Argentina for the purposes of prosecution. Applicant's repeated requests for provisional release denied by Swiss authorities. *Relevant complaints:* The Swiss system for appealing against custody pending extradition did not afford adequate safeguards under Article 5§4 of the Convention, namely 1. it provided no direct access to a court, 2. it was not possible to conduct one's own defence, 3. it was not possible to reply to the State's opinion and to appear in person before a court, 4. the length of the proceedings was excessive. *Court's conclusions:* 1. As extradition, by its very nature, involves a State's international relations, it is understandable that the executive should have an opportunity to express its views on a measure likely to have an influence in such a sensitive area. *[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 Articles: Y: 3; N: 6§3(c), 6§1, 6§3(d), 13 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment Links: English, French Translations: Bosnian, Russian	*Circumstances:* Extradition from the United Kingdom to the United States of America for the purposes of prosecution that could result in imposition of death penalty. *Relevant complaints:* 1. Exposure to the so-called "death row phenomenon" in case of extradition and subsequent imposition of death penalty, even if such penalty is not enforced, would amount to violation of Article 3 of the Convention. 2. Assurance provided by the requesting State was so worthless in its content that no reasonable requested State could regard it as satisfactory. *Court's conclusions:* 1. No derogation from the prohibition of ill-treatment under Article 3 of the Convention is permissible (absolute prohibition of torture and of inhuman or degrading treatment or punishment). The decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to ill-treatment in the requesting State. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. *[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 Court (Chamber) No.: 28/1989/188/248 Type: Judgment	*Circumstance*s: During the summer of 1975, subsequent to the bankruptcy of his construction firm, criminal investigations were instituted against the applicant, a German national, on suspicion of fraud, fraudulent conversion and tax offences. From 26 March until 9 July 1976 he was in detention on remand. The execution of the arrest warrant was then suspended. In 1977 an international search warrant was

Date: 19 March 1991 Articles: N: 5-1; N: 6 Keywords: – Extradition – Fair trial Links: English, French Translations:	issued against the applicant, who had absconded to France to avoid his arrest. Thanks to the help of a police informer, the applicant was arrested at an airport in Luxembourg by members of the Special Task Force. He was indicted in April 1979. *Relevant complaint:* The applicant claimed under 5 § 1 and 6 § 1 to have been victim of collusion between German authorities and a German police informer for the purpose of bringing him back to the Federal Republic of Germany against his will. *Court's conclusions:* The Court found that there had been no violation of Article 5 or Article 6 of the Convention. After having questioned nine witnesses, three under the domestic legal system,, and also having heard evidence on 4 July 1988 from two prosecutors and a policeman concerning the nature and extent of the contacts between the prosecuting authorities and the police informer, the Court took into account that everyone questioned denied that any kind of plan was in place to bring the applicant back to the Federal Republic of Germany against his will or that any such plan had been agreed upon. Therefore, like the Commission, the Court considered that it had not been established that the co-operation between the German authorities and the police informer extended to unlawful activities abroad. Accordingly, it did not seem necessary to examine, as the Commission did, whether the applicant's arrest in the Federal Republic of Germany would have violated the Convention.
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: Georgian, Russian	*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: not available	*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	*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

Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) Links: English, French Translations: not available	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, Date: 20 May 1994 D.R. 77-A, p. 144 Articles: N 3-5-6-Keywords: – extradition – fair trial – right to defence – inhuman treatment – non *bis in idem* Links: English, French Translations: not available	*Circumstances:* A Colombian national was convicted by the Luxembourg District Court on the charge of offences related to money-laundering. He was consequently sentenced to a five-year imprisonment and a penalty of 10 million FLUX. He was subject to an extradition order requested by the United States Authorities for cocaine trafficking and money laundering-related offences. In 1994 the applicant was extradited to the USA *sub conditionis* of not being tried or prosecuted for the same offences for which he had just been prosecuted and tried in Luxembourg. *Relevant complaint:* The applicant complained that he did not receive a fair trial. His claim was based on the fact the court was neither independent nor impartial court and that there had been a violation of his right to defence. He relied also on the unlawful retroactive application of money laundering legislation, which was applied to offences committed before its coming into force. Finally, the applicant evoked Article 3 of the Convention, alleging that extradition to the USA could allow him to be subjected to torture or to inhuman or degrading treatment or punishment. *Court's conclusions:* The Commission rejected the application due to the fact that he had not exhausted the remedies available to him under Luxembourg law, taking into account that the case did not reveal any particular circumstance which could have exempted the applicant from the generally recognised rules of international law. The Commission declared that the extradition proceedings had been fully respected, as it was the Luxembourg authorities' duty only to ascertain whether the formal conditions for extradition were satisfied. It did not consider that there had been a violation of *ne bis in idem*, principle not guaranteed by the Convention in the context of criminal proceedings in different States. On the grounds of the Article 3 of the Convention, the Commission observed that the alleged danger of being subjected to inhuman or degrading treatment was not supported by *prima facie* evidence. For this reason the Commission declared the application manifestly ill-founded.
Quinn v. France No.: 18580/91	*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.

Type: Judgment Date: 22 March 1995 Articles: Y: 5§1; N: 5§3 Keywords: – custody (length) – extradition (custody) Links: English, French Translations: Latvian, Ukrainian	*Relevant complaints:* 1. Continued custody, following an order by French court in domestic criminal proceedings for the applicant to be immediately released, arbitrary in order to leave the Paris public prosecutor's office time to instigate the setting in motion of the extradition proceedings. Custody pending extradition had simply amounted to the extension, on a different legal basis, of the period of remand detention which had just come to an end in the criminal proceedings conducted in France. Alleged an abuse of the extradition procedure for purposes relating to the investigation in France. 2. Length of custody pending extradition for almost 2 years unjustified and disclosed an abuse of the extradition procedure. The true aim of the French authorities had been to keep the applicant at their disposal for as long as was necessary to pursue the investigation in France. *Court's conclusions:* 1. Some delay in executing a decision ordering the release of a detainee is understandable. However, in the instant case the applicant remained in detention for 11 hours after the Indictment Division's decision directing that he be released "forthwith", without that decision being notified to him or any move being made to commence its execution. *[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	*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

Translations: Romanian, Russian	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]	*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

Date: 15 November 1996 Articles: Y: 3, 5§4, 13; N: 5§1 Keywords: – assurances – custody (judicial review) – custody (lawfulness) – custody (length) – expulsion – ill-treatment Links: English, French Translations: Bosnian, Russian	reason to expect to suffer mistreatment of any kind at the hands of the Indian authorities." *Relevant complaint:* If expelled to India, the applicant would be subjected to ill-treatment, as he was a well-known supporter of Sikh separatism. *Court's conclusions:* Assurance provided by the Government of India insufficient, as despite the efforts of that Government to bring about reform, the violation of human rights by certain members of the security forces in Punjab and elsewhere in India is a recalcitrant and enduring problem. The applicant's high profile would be more likely to increase the risk to him of harm. *[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	*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	*Circumstances:* Expulsion from the United Kingdom to Germany. *Relevant complaint:* The applicant would be summarily expelled from Germany to Sri Lanka (his asylum

Type: Decision Date: 7 March 2000 Articles: N: 3, 13 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	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: not available	*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.: 36952/98 (GC) Type: Judgment Date: 5 October 2000 Articles: N: 6 Keywords: – asylum – expulsion Links: English, French Translations: : Azerbaijani, Spanish	*Circumstances:* A Tunisian national entered France in 1980 and married a French national in 1992 with a disability. In 1988 he was sentenced to a 6-year prison sentence for armed robbery and armed offences, committed in 1985. He was released in 1990. On 8 August, the Minister of Interior issued a deportation order against him. He was unaware of the order of which he was notified on 6 October 1992 when he attended the Nice Centre for Administrative formalities in order to regularise his status. When he refused to return to Tunisia, he was sentenced to a 1-year prison sentence for failing to comply with the deportation order as well has an order excluding him from the French territory for 10 years. Ultimately after having appealed against the latter decision, at the Court of Cassation also, and after having fought the deportation order, seeking rescission of the exclusion order and after having obtained regularisation, he obtained a temporary residence permit valid for 1 year in 1998. Later on he obtained a ten-year residence permit.

	Relevant complaint: The applicant complained that the length of the proceedings started in 1994 for rescission of the exclusion order was unreasonable in view of Art. 6§1. *Court's conclusions:* Decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6§1 of the Convention. Art. 6§1 taken together with Art. 1 of Protocol n° 7 and its explanatory report, make it clear that the States (parties) are aware that Art. 6§1 does not apply to procedures for the expulsion of aliens (§§ 35-39). There are two dissenting opinions stating that, based upon the legal history of the drafting of Art. 6 and an extensive and dynamic interpretation of the Convention, Art. 6§1 is applicable to the case.
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	*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

Articles: Y: 8 Keywords: – expulsion – family life (separation of family) Links: English, French Translations: not available	Algeria. The mere fact that his wife spoke French was insufficient to make it possible for her to join him in Algeria. Moreover, in Algeria people lived in constant fear on account of fundamentalism. *Court's conclusions:* In assessing the relevant criteria in such a case, the Court will consider the nature and seriousness of the offence committed by the applicant; the duration of the applicant's stay in the country from 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 only Translations: 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 Date: 16 April 2002 Articles N: 2§1,3,8§1 Keywords: – Asylum – Extradition – Torture – Right to life – Right to respect for private and family life Links: French Translations: not available	*Circumstances:* The applicant, an Ecuadorian citizen, fled to Spain in order to avoid a detention order against him on the charge of bankruptcy. Here he created a new firm with his companion. In 2000, pending an extradition request by the Ecuadorian Government with relation to other people who were in the same position as the applicant (bankers who had left the country during the economic crisis of 1995,) he filed an asylum claim in Spain. In the meantime he was arrested in Lebanon during a business trip. Lebanon accepted the extradition request from Ecuador but the person had escaped to Spain. The applicant once again submitted his asylum request to Spain, which was refused. Then the Ecuadorian authorities asked Spain to continue the extradition proceedings which had been interrupted by the asylum file. The Audiencia Nacional proceeded with the extradition as a passive extradition, as it had been adopted by Lebanon. The applicant appealed asking for the suspension of the extradition proceedings, which was accorded until 14 March 2001. *Relevant complaint:* The applicant filed a complaint on the unlawfulness of his detention, which was based on offences (a bank fund appropriation) which are not sanctioned by law with the jail detention. He alleged that his prosecution was for political reasons. The Government claimed that it had examined the conditions for extradition and had received adequate guarantees that the applicant would not be subjected to any inhuman or degrading treatment if deported to his country. Relying on Article 6 of the Convention, the applicant complained that the Spanish courts had not considered the merits of the extradition procedure or the circumstances in which Ecuador had demanded the extradition from Lebanon through a document which had been badly translated into Arabic. He also complained about the examination of his asylum request by the Spanish authorities and irregularities in the proceedings brought against him in Ecuador, believing that the Spanish state was co-responsible for these facts *Court's conclusions:* The Court stated that the extradition proceedings had been fully respected, as it was the Lebanese authorities' duty only to ascertain whether the formal conditions for extradition were satisfied. It added that neither the form nor the motives could be examined by the Spanish courts, which could only ensure that the applicant's rights guaranteed by Articles 2 and 3 of the Convention would be respected in Ecuador. On the grounds of the request of asylum rejected by the Spanish authorities, the Court pointed out that neither the Convention nor the Protocols provide for the right to asylum. The Court highlighted that the Convention does not in itself guarantee the right to enter and reside in a Contracting State to individuals who are not nationals of that State. Accordingly it rejected its competence *ratione loci* underlining that the equality of proceedings, events or procedures that may take place in Ecuador as a result of the applicant's extradition is not likely to engage the responsibility of Spain. On the grounds of Article 3 the Court declared the claim manifestly unfounded due to the assurances obtained by the

	Government of Ecuador that there was no threat to the applicant's right to life, given the provisions of the political Constitution of Ecuador.
Aronica v. Germany No.: 72032/01 Type: Decision Date: 18 April 2002 Articles: N: 2, 3, 6§1, 8 Keywords: – extradition (grounds for refusal) – fair trial – family life (separation of family) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition from Germany to Italy for the purposes of enforcement of a sentence *Relevant complaints:* 1. German authorities refuse to take adequate measures to protect the applicant's life since his detention and the envisaged extradition to Italy placed him at a very serious risk of suicide. 2. Extradition would lead to separation of the applicant from his family with which he has lived in Germany for seven years. *Court's conclusions:* 1. There is no indication that the German authorities have disregarded the applicant's physical and mental condition, or failed to provide necessary medical care. The Court also notes that in the present case the extradition is to a State Party to the Convention. *[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§1,a,c,f Keywords: – Extradition – Custody (lawfulness) (reasonable time) – expulsion Links: French Translations: not available	*Circumstances:* The applicant is a Yugoslav national, arrested in Spain and charged with being a member of a gang specialised in the forgery of identity papers and safe-breaking. On the same day the order was made for his detention pending trial, coupled with his re-arrest under an international arrest warrant and detention pending extradition. The applicant was also subject to a French extradition request on the charge of aggravated rape, torture and kidnapping. After further convictions for theft, forgery and possession of weapons, for which he was sentenced to eight years imprisonment, the Spanish cabinet made a decision to grant extradition to France. *Relevant complaint:* The applicant filed a complaint alleging certain violations of the Article 5, deducing that he had been unlawfully deprived of his freedom pending the extradition proceeding. *Court's conclusions:* The Court held that there had been no violation of Article 5 of the Convention. It stated that the applicant had been detained not only for extradition purposes but also on suspicion of various offences for which he was awaiting trial in the Spanish courts, in accordance with Article 5 § 1 (c) of the Convention. Following his conviction, he was held in accordance with the provisions of Article 5 § 1 (a) of the Convention. Lastly, from the date on which the Audiencia Nacional ruled that he should be handed over to the French authorities, the applicant's detention had been continued with a view to extradition until the date he was handed over to the French authorities. The Court pointed out that here

	also he had been in detention for a reasonable time and that the authorities had shown the necessary diligence in the conduct of the case taken as a whole.
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 Translations: Georgian	*Circumstances:* Extradition from Turkey to Uzbekistan. Interim measure not complied with. *Relevant complaints:* 1. The applicants' return to Uzbekistan would result in their being subjected to treatment proscribed by Article 3 of the Convention by reason of the poor conditions and use of torture in Uzbek prisons. In support of their allegations, they referred to reports by "international investigative bodies" in the human rights field denouncing both an administrative practice of torture and other forms of ill-treatment of political dissidents, and the Uzbek regime's repressive policy towards dissidents. 2. The applicants had not had a fair hearing in the criminal court that had ruled on the request for their extradition, in that they had been unable to gain access to all the material in the case file or to put forward their arguments concerning the characterization of the offences they were alleged to have committed. 3. The applicants had no prospect of receiving a fair trial in Uzbekistan and faced a real risk of being sentenced to death and executed. Uzbek judicial authorities were not independent of the executive. The applicants had been held incommunicado since their extradition until the start of their trial and had not been permitted representation by a lawyer of their choosing. They said that the depositions on which the finding of guilt had been based had been extracted under torture. 4. By extraditing the applicants despite the interim measure indicated by the Court under Rule 39 of the Rules of Court, Turkey had failed to comply with its obligations under Article 34 of the Convention. *Court's conclusions:* 1. Reports of international human rights organizations describe the general situation in Uzbekistan but they do not support the specific allegations made by the applicants in the instant case and require corroboration by other evidence. *[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: – extradition (custody) – custody (judicial review) – custody (lawfulness) – custody (length) – custody (right to be informed of the reasons for arrest) Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Belarus. *Relevant complaints:* 1. A person should normally be arrested on the basis of a request for extradition, but nothing showed that any such request had been received by the Russian authorities before the applicant's arrest. The Belarusian detention order itself could not serve as the basis for the applicant's preliminary arrest because Belarus and Russia were independent States with their own rules of criminal procedure. 2. The law governing the extradition procedure was not sufficiently precise. 3. The applicant had not been informed about the reasons for his arrest. *Court's conclusions:* 1. The Russian General Prosecutor's Office had indeed received the Belarusian General Prosecutor's Office request for extradition on 4 August 1998, i.e. 26 days after the applicant's arrest on 9 July 1998. However, as early as 22 September 1997, that is some 9 months before the arrest, the Russian authorities had received from Belarus an international search and arrest warrant for the applicant. It follows that, pursuant to Article 61§1 of the applicable extradition treaty, the Russian authorities were under an obligation to find and arrest the applicant, which they did. Furthermore, the request for the applicant's extradition, required by Article 56 of the applicable extradition treaty, was received by the Russian General Prosecutor's Office within the 40-day time-limit established by Article 62§1 of that treaty, i.e. in time. *[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: 5§3 ; N : 3 Keywords: – Custody (length) (lawfulness) (reasonable time) – Extradition – Right to liberty and security Links: English, Translations: not available	*Circumstances:* The applicant, in detention in Italy pending the proceeding, claimed to be a Cuban national. He was arrested in Milan on suspicion of international drug trafficking. On 7 October 1999 Como District Court sentenced him to fifteen years imprisonment, which was subsequently reduced to eleven years on appeal. Meanwhile, on 14 May 1998 the Ministry of Justice had requested that the applicant be placed in detention with a view to his extradition. In the meantime the United States authorities had once again requested the applicant's extradition on the charge of making false statements. On 9 March 2000 Brescia Court of Appeal (whose decision was upheld by the Court of Cassation) ruled in favor of extradition. Its judgment indicated that the applicant was a Cuban national with a permanent residence permit in the United States. The applicant alleged, however, that his status in the United States was that of a deportable alien. *Relevant complaint:* The applicant relied on Article 3 (prohibition of inhuman or degrading treatment or punishment), Article 5 (right to liberty and security) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. He in particular alleged that his extradition to the USA would have exposed him to an indefinite time of imprisonment, taken into account the lack of diplomatic ties between Cuba and the United States. *Court's conclusions:* The Court highlighted that the seriousness of the offences on charge and the complexity of the case could justify the length of the preliminary investigation. However the Court stated that in this case there had been a violation of Article 5 § 3 based on the excessive length of proceedings. It noted that the proceedings had either been stayed or that the examination of the merits of the case had been adjourned pending a ruling on a matter of jurisdiction. Under these circumstances, the Court considered that the Italian authorities had not displayed "special diligence" in the conduct of the proceedings.
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	*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.

– custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – death penalty – extradition (custody) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English, French Translations: Ukrainian	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: not available	*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: not available	*Circumstances:* Expulsion or "atypical extradition" of a Kurd activist from Kenya to Turkey. *Relevant complaint:* The applicant complained that he had been deprived of his liberty unlawfully, without the applicable extradition procedure being followed (instead, he been de facto abducted by the Turkish authorities operating abroad, beyond their jurisdiction). *Court's conclusions:* An arrest made by the authorities of one State on the territory of another State, without the consent of the latter, affects the arrested person's individual rights to security under Article 5§1 of the Convention. The Convention does not prevent cooperation between States, within the framework of extradition treaties or in matters of deportation, for the purpose of bringing fugitive offenders to justice, provided that it does not interfere with any specific rights recognised in the Convention. The fact that a fugitive has been handed over as a result of cooperation between States does not in itself make the arrest unlawful and does not therefore give rise to any problem under Article 5 of the Convention. Subject to it being the result of cooperation between the States concerned and provided that the legal basis for the order for the fugitive's arrest is an arrest warrant issued by the authorities of the fugitive's State of origin, even an atypical extradition cannot as such be regarded as being contrary to the Convention. *[paras. 85, 86, 87 and 89]*
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: not available	*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 – family life (separation of family) – ill-treatment – interim measure Links: English, French Translations: not available	*Circumstances:* Expulsion from France to Algeria following a conviction for criminal offences in France. Interim measure not complied with. *Relevant complaints:* 1. Expulsion to Algeria would expose the applicant to ill-treatment because the treatment required by his hepatitis is not available in Algeria, where he does not have social security, and because his father was a harki[8], for which he fears reprisals from Islamists. 2. Expulsion to Algeria is contrary to Article 8 of the Convention because his whole family, his daughter, parents, siblings and aunts and uncles live in France. He has no family ties to Algeria where he never returned in 39 years since he left the country, aged four. *Court's conclusions:* 1. Because of the non-compliance with the interim measure, the Court was not able to examine the applicant's complaint properly. *[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; inadmissible: 3 Keywords: = assurances – Extradition – Ill treatment – life sentence – Interim measure	*Circumstances:* Extradition of a Peruvian national from Spain to Peru following terrorism charges (the applicant was a suspected member of the Shining Path) Interim measure not complied with. Relevant complaints: Extradition to Peru would imply the risk to be sentenced to a life sentence without the possibility of parole. *Court's conclusions:* The applicant consented to his extradition and the Peruvian Government provided a diplomatic guarantee that the applicant, if found guilty would not be sentenced to the maximum sentence of life imprisonment, but to the sentence immediately below that sentence. Given the fact that the applicant consented (simplified extradition procedure) and sufficient guarantees were provided regarding the sentence, the applicant was surrendered despite the provisional measure. The Court declared the application re. article 3

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

Links: English, French Translations: not available	inadmissible but found a violation of article 34. Even the fact that the applicant was released three months after his surrender and was able to be in touch with his lawyer and thus his right to an effective remedy was not hindered, the State's decision as to whether it complies with the interim measure cannot be deferred pending the hypothetical confirmation of the existence of a risk. Failure to comply with the measure because of the existence of a risk is in itself alone a serious hindrance, at that particular time, of the effective exercise of the right to individual application (para 69-70 and 77-81).
Abu Salem v. Portugal No.: 26844/04 Type: Decision Date: 9 May 2006 Articles: 2, 3 and 6: inadmissible Keywords: - extradition - assurances - death penalty - ill treatment - life sentence - Fair trial - Rule of speciality Links: English, French Translations: not available	*Circumstances:* Extradition of a Indian national from Portugal to India following terrorism charges. *Relevant complaints:* Extradition to India would imply the risk to be sentenced to the death penalty or a life sentence without the possibility of parole. *Court's conclusions*:India provided diplomatic assurances: the applicant will not be sentenced to the death penalty and that, if sentenced, a penalty of maximum 25 years would be imposed. The guaranties provided by India are of a legal, political and diplomatic nature and were deemed sufficient by the Portuguese (judicial) authorities. Given de Indian domestic legislation, that provides for the automatic commutation of the death penalty into a life sentence, there exists a real legal impossibility for the applicant to be sentenced to the death penalty. The guarantee with respect to the maximum duration of the penalty, was also deemed sufficient by the Portuguese courts. These have underlined that if the Indian – independent – judiciary would impose a higher sentence, the Executive must make use of its powers to commute the penalty to the assured 25-year maximum. The guarantee is rightly been considered as reliable. Insofar the applicant alleged that the would be prosecuted for offences that are not contained in the extradition request, i.e. in violation of the speciality principle, the Court indicated that the good faith of Portugal in the respect of international law by the Indian Union, which cannot be considered as a State that does not uphold the rule of law, cannot be questioned Insofar the applicant alleged that he risks to be treated contrary to article 3 by the police or by extremist Hindu groups, given his Islamic background: these allegations were duly examined and discarded. The applicant alleged that because of the type of offence, his religion and pressure from the media, his extradition would amount to a violation of article 6. Since article 6 requires to show a flagrant violation of article 6, which is not shown in this case, there is no risk of a violation of article 6.
Al-Moayad v. Germany	*Circumstances:* Extradition from Germany to the United States of America for the purposes of

No.: 35865/03 Type: Decision Date: 20 February 2007 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: not available	prosecution on charges of supporting and financing terrorism. The applicant had been lured to travel from Yemen to Germany by an undercover agent working for the United States. *Relevant complaints:* 1. Extradition to the United States violated Article 3 of the Convention because, like other terrorist suspects, the applicant would be subjected to interrogation methods amounting to torture at the hands of the United States authorities. 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	*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

Date: 8 March 2007 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English, French Translations: not available	that despite the existing legislation in Nigeria banning the practice, the tradition lived on as a result of strong social pressure. *Court's conclusions:* The Court observes that although there are indications that the FGM rate is more prevalent in the south, where Delta State is situated, the alleged rate differs significantly from the background information provided by various institutions, NGOs and the Nigeria Demographic and Health Survey as to the FGM rate for the whole country in 2005, which amounted to approximately 19%, a figure that has declined steadily in the past 15 years. The applicant did not choose to go to another State within Nigeria or to a neighbouring country, in which she could still have received help and support from the father of the child and her own family; instead, she managed to obtain the necessary practical and financial means and accordingly succeeded in travelling from Nigeria to Sweden and applying for asylum; viewed in this light, it is difficult to see why the first applicant, having shown such a considerable amount of strength and independence, cannot protect the second applicant from being subjected to FGM, if not in Delta State, then at least in one of the other states in Nigeria where FGM is prohibited by law and/or less widespread than in Delta State**.** The fact that the applicants' circumstances in Nigeria would be less favourable than in Sweden cannot be regarded as decisive from the point of view of Article 3 of the Convention. *[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, French Translations: not available	*Circumstances:* Expulsion from France to Afghanistan following failed application for asylum. *Relevant complaint:* Expulsion to Afghanistan would expose the applicant to inhuman and degrading treatment. The hostility of the authorities in his home province, based both on political and ethnic reasons, forced him to flee Afghanistan to save his life. *Court's conclusions:* The Court emphasized, in particular, that the applicant is not himself a former Communist Party leader, but only the son of one of these and that it was not established to what extent he could be personally at risk of repression in Afghanistan. *[para. 67]*
Nasrulloyev v. Russia No.: 656/06 Type: Judgment Date: 11 October 2007 Articles: Y: 5§1(f), 5§4	*Circumstances:* Extradition from Russia to Tajikistan for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. From 13 to 21 August 2003 the applicant had been detained without any judicial decision, the term of his detention had exceeded the maximum eighteen-month period under Russian law, and the criminal-

Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	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 Keywords: – custody (lawfulness)	*Circumstances:* Life sentence served in Cyprus. *Relevant complaint:* The whole or a significant part of the period of the applicant's detention for life was a period of punitive detention that exceeded the reasonable and acceptable standards for the length of a period of punitive detention as required by the Convention. Under the legislative scheme currently in force in Cyprus there was no parole board system and no provision was made for the granting of parole to prisoners. Thus, the principal purpose of the sentence of imprisonment imposed by the Cypriot courts and subsequently enforced by the relevant authorities was punitive. The unexpected reversal of his legitimate

– discrimination – life sentence Links: English, French Translations: Armenian	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: Azeri, Italian	*Circumstances:* Expulsion from Italy, following serving a sentence in Italy imposed for criminal conspiracy of terrorist character and following failed asylum application, to Tunisia where he was sentenced in absentia by a military court to 20 years of imprisonment for membership in a terrorist organization and incitement of terrorism. Interim measure complied with. At request by Italy, Tunisia provided assurances that the applicant, if expelled to Tunisia would enjoy safeguard of the relevant Tunisian laws and that the Tunisian laws in force guarantee and protect the rights of prisoners in Tunisia and secure to them the right to a fair trial and pointed out that Tunisia has voluntarily acceded to the relevant international treaties and conventions. Interim measure complied with. *Relevant complaint:* The applicant submitted that it was "a matter of common knowledge" that persons suspected of terrorist activities, in particular those connected with Islamist fundamentalism, were frequently tortured in Tunisia. The applicant's family had received a number of visits from the police and was constantly subject to threats and provocations; his sister had twice tried to kill herself because of this. A mere reminder of the treaties signed by Tunisia could not be regarded as sufficient. *Court's conclusions:* It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. Where such evidence is adduced, it is for the Government to dispel any doubts about it. In order to determine

	whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances. To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department. The mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 of the Convention. Where the sources available describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence. The scale of the danger of terrorism today and the threat it presents to the community must not call into question the absolute nature of Article 3 of the Convention. The Court cannot accept that a distinction must be drawn between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole. Either the evidence adduced before the Court reveals that there is a substantial risk if the person is sent back or it does not. The prospect that he may pose a serious threat to the community if not returned does not reduce in any way the degree of risk of ill treatment that the person may be subject to on return. The visits by the International Committee of the Red Cross cannot exclude the risk of subjection to ill-treatment. The existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention. *[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) – custody (lawfulness) – extradition (custody)	*Circumstances:* Extradition of twelve Uzbek and one Kyrgyz nationals from Russia to Uzbekistan for the purposes of prosecution for membership in a terrorist organization, supporting terrorism, attempting a violent overthrow of the constitutional order of Uzbekistan and some other offences connected with the mass disorders in Andijan in 2005. The applicants were granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaints:* 1. Torture in Uzbekistan was widespread in detention facilities and individuals charged in connection with the Andijan events were at an increased risk of ill-treatment. Uzbek authorities had given the same assurances in the extradition proceedings of four Uzbek nationals from Kyrgyzstan and that those assurances had proved to be ineffective. As the Uzbek authorities refused to give representatives

– extradition (grounds for refusal) – ill-treatment – presumption of innocence Links: English, French Translations: Italian	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	*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:*

Articles: Y: 3, 5§1(f), 5§3, 5§4, 13 Keywords: – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment Links: English, French Translations: not available	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 unrebutted 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: not available	*Circumstances:* Extradition from Russia to Belarus for the purposes of prosecution. *Relevant complaints:* 1. The applicant had been detained without a judicial warrant in excess of the forty-eight-hour period established by the Russian Constitution. 2. The applicant submitted that a complaint to a court about the unlawfulness of her detention would have been ineffective because the Prosecutor General's Office had a two-fold duty of making a case for holding her in custody and ensuring respect for her rights. She further complained that she had not been taken to the hearing before the competent Russian Court. *Court's conclusions:* 1. No record of the applicant's arrest was drawn up upon her apprehension (the police officers believed that an arrest record was not required in the framework of extradition proceedings). Irrespective of whether their interpretation of the domestic law was correct or not, the absence of an arrest record must in itself be considered a most serious failing, as unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention. Similar to paragraph 4 of Article 16 of the European Convention on Extradition, Article 62 of the Minsk Convention establishes an additional guarantee against an excessive duration of provisional arrest pending receipt of a request for extradition. It does not indicate that a person may be detained for forty days but rather requires that the person should be released upon expiry of the fortieth day if the request has not been received in the meantime. In other words, even though under domestic law detention could be ordered for a period exceeding forty days, Article 62 of the Minsk Convention requires the domestic authorities to release anyone who has been detained for more than forty days in the absence of a request for extradition. *[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 Keywords: – custody (judicial review) – custody (lawfulness) – custody (length) – custody (right to be informed of	*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 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

the reasons for arrest) – extradition (custody) – ill-treatment Links: English only Translations: not available	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	*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

Articles: N: 2, 3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment – life sentence Links: French only Translations: not available	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: not available	*Circumstances:* Expulsion of a Tunisian national from Italy after serving a sentence for assault, to Tunisia where he was sentenced in absentia by a military Court to 10 years imprisonment for terrorist offences. After the applicant was expelled, Tunisia, at the request of Italy, provided assurances that the applicant would enjoy the safeguard of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure not complied with. *Relevant complaints:* 1. The applicant claimed that several Tunisian nationals expelled to Tunisia on the ground that they were suspected of terrorism had no longer shown any signs of life. Reports published by Amnesty International and the US Department of State demonstrating that torture was used in Tunisia confirmed that claim. The applicant's family was subjected to threats and provocations. The assurances provided by Tunisia are not reliable and were provided after the applicant was expelled which demonstrates that Italy accepted the risk that he might be subjected to ill-treatment. 2. The fact that the applicant was expelled on the basis of a different decision than the one referred to in the Court's interim measure is not relevant with regard to the obligations of Italy under Article 34 of the Convention. The Italian authorities cannot circumvent their duty to respect the Court's interim measures on the pretext of a new decision on expulsion and its immediate execution. *Court's conclusions:* 1. The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of

	ill-treatment is firmly established. The existence of a risk of ill-treatment must be assessed primarily with those facts which were known or ought to have been known to the State at the time of expulsion. The Court is not precluded, however, from having regard to information which came to light subsequently and which might be of value in confirming or refuting the appreciation made by the State of the well-foundedness of an applicant's fears. If the elements provided by Tunisian authorities may establish that the applicant was not subjected to ill-treatment during the weeks following his expulsion, there is no knowing what might happen to him in the future. *[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) – custody (right to be informed of the reasons for arrest) – extradition (custody) Links: English only Translations: not available	*Circumstances:* Extradition from Russia to Azerbaijan for the purposes of prosecution. Extradition denied on the ground of UNHCR refugee status of the applicant. *Relevant complaints:* 1. Detention had been ab initio unlawful, because he could not be expelled to Azerbaijan having been granted refugee status. 2. The report drawn up immediately after the applicant's arrest included a reference to the arrest warrant issued by a prosecutor of the Republic of Azerbaijan. No further information on the criminal charges against him and their legal characterization and factual basis, or a copy of that arrest warrant, was provided to the applicant. *Court's conclusions:* 1. Having regard to the similar protection Russian law affords against expulsion both to Russian nationals and refugees, the Court does not consider that the conclusion reached in the Garabayev case is altered in the present case. The Court therefore finds that the flaw in the very act of the applicant's arrest was so fundamental as to render it arbitrary and ex facie invalid from the outset. *[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 Links: French only Translations: not available	*Circumstances:* Extradition of an Italian national to the USA for the purpose of prosecution. At the request of the Italian Court, the US Department of Justice provided an assurance that the applicant was not accused of a "capital felony" and, therefore, that the death penalty was not even potentially applicable in his case. *Relevant complaint:* The applicant claimed that his extradition to the USA exposed him to the risk of being sentenced to the death penalty. The assurances given by the US government did not exclude the possibility that the description of the offense he was accused of be altered to a capital felony as the extradition Treaty between the USA and Italy allowed for such an alteration. The principle of speciality enshrined in the Treaty does not prohibit the requesting State from prosecuting the extradited person when the same facts for which extradition has been granted constitute a differently denominated offense which is extraditable. The absence of certainty regarding the incurred sentence is not compatible with the absolute nature of the prohibition laid down by Protocol No. 6. *Court's conclusions:* The Court noted that the Italian authorities had warded off any risk of a death sentence on the grounds that the applicant was accused of crimes for which such a penalty is not incurred, that the principle of speciality included in the Treaty prohibited the alteration of the denomination of the offense into a capital felony and that the Treaty had been implemented in US law and must therefore be observed by every US Court. These elements were precise and verifiable and their interpretation by Italian authorities is neither manifestly illogical nor arbitrary. The diplomatic assurances provided by the US Department of Justice may be taken into account by the Court when assessing the existence of a real and

	tangible violation of Article 1 of Protocol No. 6. Nothing in the present case allows to consider that the assurances were not serious and reliable. *[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: not available	*Circumstances:* Extradition from Spain to Malta for the purposes of prosecution for a criminal offence committed in Spain that was supposed to have effects in Malta (conspiracy to transport drugs from Spain to Malta). *Relevant complaints:* 1. The applicant had not been "lawfully arrested" on reasonable suspicion of having committed "an offence" – the court issuing the warrant for his arrest did not have the authority to do so and the facts of which he was accused did not amount to a triable offence in Malta (as conspiracy committed outside Malta is not actionable in Malta). 2. Inaction of the Maltese authorities vis-à-vis his release in Spain after the arrest warrant had been declared invalid resulted in a further ten-day period of detention. By contacting Interpol, the Maltese authorities sent the message to the wrong address and by means of the wrong courier. At the time, before the coming into force of the European Arrest Warrant, a request for extradition was conducted through diplomatic channels, and only the Minister had the power to halt such requests. However, the AG failed to advise the Minister to withdraw the extradition on the basis of the rescinded warrant. *Court's conclusions:* 1. The reasoning of the Civil Court and the Constitutional Court both gave a full explanation of how the law was to be interpreted, making it clear that the facts of which the applicant was accused fell to be considered as an offence under Maltese law. Such interpretation has become customary in domestic practice and was further reaffirmed by the criminal courts which later convicted the applicant. Consequently, the offences of which the applicant was accused constituted a "law" of sufficient "quality" within the meaning of the Court's case-law and nothing suggests that the Maltese courts interpreted the relevant domestic law provisions unreasonably or in such a way as to make punishable acts which would otherwise have remained outside the scope of the relevant criminal law. Their interpretation was not therefore arbitrary so as to render the applicant's detention unlawful also under this respect. *[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	*See the summary of the very similar case of Ben Khemais v. Italy.*

Date: 5 May 2009 Articles: Y: 3 Keyword: – assurances – expulsion – ill-treatment Links: French only Translations: not available	
Abdolkhani and Karimnia v. Turkey (No. 1) No.: 30471/08 Type: Judgment Date: 22 September 2009 Articles: Keywords: Y: 3, 5§1, 5§2, 5§4, 13 – asylum – custody (judicial review) – custody (lawfulness) – custody (right to be informed of the reasons for arrest) – expulsion – ill-treatment Links: English, French Translations: not available	*Circumstances:* Expulsion from Turkey to Iraq or Iran of two persons granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaint:* The applicants' removal to Iran would expose them to a real risk of death or ill-treatment, as former members of the PMOI run the risk of being subjected to the death penalty in Iran. In Iraq, they would be subjected to ill-treatment as they are considered by Iraqi authorities to be allies of the former Saddam Hussein regime. *Court's conclusions:* Owing to the absolute character of the right guaranteed by Article 3 of the Convention, the existence of the obligation not to expel is not dependent on whether the risk of ill-treatment stems from factors which involve the responsibility, direct or indirect, of the authorities of the receiving country. Article 3 of the Convention may thus also apply in situations where the danger emanates from persons or groups of persons who are not public officials. What is relevant in this context is whether an applicant is able to obtain protection against and seek redress for the acts perpetrated against him or her. Unlike the Turkish authorities, the UNHCR interviewed the applicants and had the opportunity to test the credibility of their fears and the veracity of their account of circumstances in their country of origin. Following these interviews, it found that the applicants risked being subjected to an arbitrary deprivation of life, detention and ill treatment in their country of origin. In the light of the above, the Court finds that there are serious reasons to believe that former or current PMOI members and sympathisers could be killed and ill-treated in Iran and that the applicants used to be affiliated to this organisation. Moreover, in the light of the UNHCR's assessment, there exist substantial grounds for accepting that the applicants risk a violation of their right under Article 3 of the Convention, on account of their individual political opinions, if returned to Iran. The indirect removal of an alien to an intermediary country does not affect the responsibility of the expelling Contracting State to ensure that he or she is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention. Given that the applicants' deportation to Iraq would be carried out in the absence of a legal

	framework providing adequate safeguards against risks of death or ill-treatment in Iraq and against the applicants' removal to Iran by the Iraqi authorities, the Court considers that there are substantial grounds for believing that the applicants risk a violation of their rights under Article 3 of the Convention if returned to Iraq. *[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	*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 Type: Decision Date: 26 January 2010 Articles: N: 3, 6, 8 Keywords: – assurances – extradition (grounds for refusal) – fair trial – family life (separation of family) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition of a British national from the United Kingdom to Australia for the purposes of prosecution. Interim measure complied with. *Relevant complaints:* 1. If extradited and convicted, there was a real risk that the applicant would be sentenced to life imprisonment without parole. 2. The applicant would suffer a flagrant denial of justice since he would be unable to obtain legal aid and, furthermore, he would be unable to secure the attendance of witnesses for his defence who would have to travel from Europe to Australia to attend the trial since the Australian authorities were only prepared to allow video link evidence for non-contentious testimony. The Australian legal-aid budget would not meet the cost of travel. This would infringe the right to equality of arms, the right to legal assistance and the right to obtain the attendance and examination of witnesses. 3. The extradition would constitute a disproportionate interference with the applicant's right to respect for his family life.

	Court's conclusions: 1. A sentence of life imprisonment without parole is unlikely to be imposed in this case and thus there is no real risk of the applicant serving such a sentence if convicted in Australia. The Australian authorities have distinguished that case from the present one by indicating that, if the applicant is convicted, the prosecution will not submit to the court that a sentence of life imprisonment without parole is an appropriate sentencing option. No significance can be attached to the absence of any diplomatic assurance from the Australian Government that a sentence of life imprisonment with no non-parole period will not be sought and no fault can be attached to the United Kingdom Government for failing to seek such an assurance; both Governments were entitled to take the view that, since such a sentence was highly unlikely, no such assurance was necessary. *[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* and *Mamatkulov*. The applicant has failed to demonstrate that the Australian authorities would not give due consideration to any application for legal aid he might choose to make. Article 6§3(d) of the Convention does not guarantee the accused an unlimited right to secure the appearance of witnesses in court: it is for the domestic courts to decide whether it is appropriate to call a witness. *[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	*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

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	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	*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

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	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: not available	*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: not available	*See the summary of the very similar case of Abdolkhani and Karimnia v. Turkey (No. 1).*
Tehrani v. Turkey Nos.: 32940/08 & 41626/08 & 43616/08	*Circumstances:* Expulsion from Turkey to Iraq or Iran of a person granted refugee status by the UNHCR. Interim measure complied with. *Relevant complaints:*

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: not available	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 – expulsion – ill-treatment – interim measure Links: French only Translations: not available	*Circumstances:* Expulsion of a Tunisian national from Italy, after serving a sentence, to Tunisia where he was sentenced in absentia by a military Court to 10 years imprisonment for terrorist offences. After the applicant was expelled, Tunisia, at the request of Italy, provided assurances that the applicant would enjoy the safeguards of the relevant Tunisian laws and that Tunisian laws guarantee and protect the rights of prisoners and secure their right to a fair trial and pointed out that Tunisia has voluntarily acceded to the UN Convention against torture. Interim measure not complied with. *Relevant complaints:* 1. The applicant claimed that several Tunisian nationals expelled to Tunisia on the ground that they were suspected of terrorism had no longer shown any signs of life. Reports published by Amnesty International and the US Department of State demonstrating that torture was used in Tunisia confirmed that claim. The assurances provided are not reliable. 2. The assurances provided by Tunisia only reached Italian authorities 1 month after the expulsion took place. Therefore, expulsion was decided without any formal guarantees provided by Tunisia. *Court's conclusions:* 1. The Court sees no reason to revise the conclusions reached in the Saadi case regarding the situation of prisoners and people accused of terrorism in Tunisia. The Court is unable to accept that the assurances provided offer an effective protection against the serious risk run by the applicant and reminds the principle laid down by the Parliamentary assembly of the Council of Europe in its resolution 1433(2005) according to which diplomatic assurances are not enough unless the absence of a risk of ill-treatment is firmly established. The existence of a risk of ill-treatment must be assessed primarily with those facts which were known or ought to have been known to the State at the time of expulsion.

	The Court is not precluded, however, from having regard to information which came to light subsequently and which might be of value in confirming or refuting the appreciation made by the State of the well-foundedness of an applicant's fears. *[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: – assurances – asylum – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Extradition of an asylum seeker from Russia to Tajikistan for the purposes of prosecution for membership in a proscribed organisation. Interim measure complied with. *Relevant complaints:* 1. If extradited to Tajikistan, the applicant would be subjected to ill-treatment in breach of Article 3 of the Convention. He also claimed that the Russian authorities had failed to assess risks of ill-treatment that he would run in the requesting country. 2. The applicant's ongoing detention pending extradition had been "unlawful": first, until 21 December 2007 he had been detained in the absence of an official request for extradition; secondly, the term of his detention had not been extended by the domestic courts. He had not been promptly informed of the reasons for his arrest. His detention had not been subject to any judicial control and he had been deprived of the right to have the lawfulness of his detention reviewed by a court owing to lack of access to a lawyer during the first two weeks of his detention. *Court's conclusions:* 1. The main argument raised by the applicant under Article 3 of the Convention is the danger of ill-treatment in Tajikistan, exacerbated by the nature of the crime that he had been charged with. The Court observes in this respect that he was accused of involvement in the activities of Hizb ut-Tahrir, a transnational Islamic organisation. It reiterates that in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the information contained in recent reports from independent international human-rights-protection

	associations or governmental sources, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3 of the Convention. The Government's reference to the fact that the applicant did not apply for political asylum immediately after his arrival to Russia does not necessarily refute the applicant's allegations of risks of ill-treatment since the protection afforded by Article 3 of the Convention is in any event broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees. The assurances given in the present case were rather vague and lacked precision; hence, the Court is bound to question their value. *[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: not available	*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	*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

Links: English only Translations: not available	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: Serbian, Turkish	*Circumstances:* Use of evidence obtained in violation of Article 3 of the Convention (threat of torture) in criminal trial. Difference between torture and inhuman treatment. *Relevant complaint:* The applicant claimed that during his interrogation by detective officer E. on 1 October 2002, he had been subjected to treatment prohibited by Article 3 of the Convention. Detective officer E. had threatened that "intolerable pain the likes of which he had never experienced" would be inflicted on him if he did not disclose J.'s whereabouts. He had threatened that this pain would be inflicted without leaving any traces and that an officer, specially trained in such techniques, was en route to the police station in a helicopter. Physical injuries had also been inflicted on him during the interrogation. E. had hit him several times on the chest, causing bruising, and on one occasion had pushed him, causing his head to hit the wall. He claimed that he had been threatened by the police at a time when they had already been aware that J. was dead and had therefore been forced to incriminate himself solely in order to further the criminal investigations against him. *Court's conclusions:* The Court has considered treatment to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. Treatment has been held to be "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience. In determining whether a particular form of ill-treatment should be classified as torture, consideration must be given to the distinction, embodied in Article 3 of the Convention, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating. The Court further reiterates that a threat of conduct prohibited by Article 3 of the Convention, provided it is sufficiently real and immediate, may fall foul of that provision. Thus, to threaten an individual with torture may constitute at least inhuman treatment.

	[paras. 89, 90 and 91]
Babar Ahmad and others **v. United Kingdom (Decision)** Nos.: 24027/07, 11949/08 & 36742/08 Type: Decision Date: 6 July 2010 Articles: Y: 3; N: 2, 3, 5, 6, 8, 14 Keywords: – assurances – death penalty – extradition (grounds for refusal) – fair trial – ill-treatment – life sentence Links: English only Translations: not available	*NOTE: For the Judgment, see below.* *Circumstances:* Extradition of three British nationals and one person of disputed nationality from the United Kingdom to the United States of America for the purposes of prosecution for various terrorist and terrorism-related offences. *Relevant complaints:* 1. The question whether there was a real risk of designation as enemy combatants could only be assessed in the light of evidence of the United States' approach towards individuals suspected of possessing information on terrorism. The applicants were of potential, ongoing interest as subjects for interrogation to obtain such information. They also submitted an affidavit from an American lawyer who specialised in terrorism cases, in which he stated that the reference to "federal court" in the Diplomatic Notes did not guarantee a trial in the civilian courts but would allow for trial in any court created by the federal government. The applicants also argued that the real risk of designation as enemy combatants did not even require a finding of bad faith; the ambivalent language of the Diplomatic Notes allowed for transfer to Guantánamo Bay after trial or even designation as an enemy combatant in the event of an acquittal. Moreover, the breadth of the counter-terrorism powers of the President of the United States meant the assurances could not be regarded as binding on him. There was the real possibility that he could rely on a change in circumstances after extradition to justify invoking Military Order No. 1. It was not sufficient to rely on the history of extradition arrangements with the United States, as the Government had done: the attitude of the United States Government had changed fundamentally as a result of the events of 11 September 2001. Moreover, when a country regularly practiced a particular form of a violation of the Convention, its assurances in respect of an individual could not remove the risk to that individual. 2. Pursuant to the doctrine of conspiracy in federal criminal law, if it were proved that one of the applicant's alleged co-conspirators had murdered a United States citizen, this would render the first applicant liable to a capital charge. *Court's conclusions:* 1. The Court recognises that, in extradition matters, Diplomatic Notes are a standard means for the requesting State to provide any assurances which the requested State considers necessary for its consent to extradition. It also recognises that, in international relations, Diplomatic Notes carry a presumption of good faith. The Court considers that, in extradition cases, it is appropriate that that presumption be applied to a requesting State which has a long history of respect for democracy,

	human rights and the rule of law, and which has longstanding extradition arrangements with Contracting States. Consequently, the Court considers that it was appropriate for the High Court, in its judgment concerning the first and second applicants, to accord a presumption of good faith to the United States Government. However, as the Government have observed, the existence of assurances does not absolve a Contracting State from its obligation to consider their practical application. In determining whether this obligation has been met in the present cases, the Court considers that some importance must be attached to the fact that, as in the case of Al-Moayad, the meaning and likely effect of the assurances provided by the United States Government were carefully considered by the domestic courts in the light of a substantial body of material concerning the current situation in the United States of America. The domestic courts were able to do so because the United States Government were a party to those proceedings and were able to adduce evidence such as to assist the those courts with any doubts as to the meaning and effect of the assurances that had been given. In further assessing the practical application of the assurances which have been given by the United States Government, the Court must also attach some importance to the fact that the applicants have been unable to point to a breach of an assurance by the United States Government that has been given to the United Kingdom Government (or indeed any other Contracting State) in the context of an extradition request, before or after the events of 11 September 2001. While the applicants and Amnesty International have relied on the alleged breach of assurances given in respect of Diego Garcia, on the basis of the United Kingdom Government's observations, the Court is satisfied that those assurances were given in error and corrected by the United States Government. In any event, the assurances given in the present cases are materially different: they are specific to the applicants and are unequivocal. There is no suggestion that they have been given in error. It is true that these assurances have been given by the United States Government to the United Kingdom Government and not to the applicants. On this basis, Amnesty International has observed in its report that there is no mechanism by which the applicants could enforce the assurances which have been given. However, in the Court's view that would only be relevant if it were established that there was a real risk of a breach of those assurances. *[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) – extradition (grounds for refusal) – ill-treatment – nationality Links: English only Translations: not available	*Circumstances:* Extradition of an unsuccessful asylum seeker from Russia to Uzbekistan for the purposes of prosecution for active participation in subversive activities of an extremist organization (jihad). *Relevant complaint:* The applicant's extradition to Uzbekistan would subject him to a real risk of torture and ill-treatment and political persecution. *Court's conclusions:* As to the applicant's allegation that detainees suffer ill-treatment in Uzbekistan, the Court has recently acknowledged that this general problem still persists in the country. No concrete evidence has been produced to demonstrate any fundamental improvement in this area in Uzbekistan in the last several years. Given these circumstances, the Court considers that ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan. As to the applicant's personal situation, the Court observes that he was charged with politically motivated crimes. Given that an arrest warrant was issued in respect of the applicant, it is most likely that he would be directly placed in custody after his extradition and would therefore run the serious risk of ill-treatment. The Government did not submit a copy of any diplomatic assurances indicating that the applicant would not be subjected to torture or ill-treatment. Secondly, the Court has already cautioned against reliance on diplomatic assurances against torture from a State where torture is endemic or persistent. Given that the practice of torture in Uzbekistan is described by reputable international experts as systematic, the Court would not be persuaded that assurances from the Uzbek authorities could offer a reliable guarantee against the risk of ill-treatment. *[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:	*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.

– asylum – expulsion – ill-treatment Links: French only Translations: not available	*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 Nos.: 21022/08 & 51946/08 Type: Decision Date: 14 September 2010 Articles: N: 2,3 Keywords: – assurances – death penalty – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition of two Russian nationals of Chechen ethnic origin from Slovakia to Russia for the purposes of prosecution for 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 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 and. This new matter (No. 65916/10) is still pending before the Court.
Iskandarov v. Russia No.: 17185/05 Type: Judgment Date: 23 September 2010 Articles: Y: 3, 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*Circumstances:* Extradition of an asylum seeker from Russia to Tajikistan for the purposes of prosecution for membership in a proscribed organisation. After denial of the extradition, the applicant was kidnapped and unlawfully removed to Tajikistan. *Relevant complaints:* 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 Links: English only Translations: not available	*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 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 Type: Judgment Date: 10 February 2011 Articles: Y: 2 (Prot. 4); N: 3, 6 Keyword: – assurances – extradition (grounds for refusal) – fair trial – ill-treatment Links: English only Translations: Russian	*Circumstances:* Extradition of a Kazakh national from Ukraine to Kazakhstan for the purposes of prosecution. The General Prosecutor's Office of Kazakhstan provided diplomatic assurances that the 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) – extradition (custody) – extradition (effective remedies) – extradition (grounds for refusal) – ill-treatment Links: English only Translations: not available	*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 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.]*
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: not available	*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: – custody (lawfulness)	*Circumstances:* Provisional arrest in view of extradition at the request of the USA of a Russian national who, while visiting Switzerland for family and business reasons, was summoned as a witness in a Swiss criminal case. *Relevant complaints:* 1. The applicant claimed that the Swiss authorities wrongfully deprived him of the safe-conduct rule accrued to him under Article 12 of the 1959 Convention on mutual legal assistance in criminal matters. 2. The applicant argued that Swiss authorities resorted to trickery in order to circumvent the formal

– extradition (custody) – mutual assistance (hearing witnesses) Links: French only Translations: not available	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 – ill-treatment Links: English only Translations: not available	*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 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 Translations: not available	*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. 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 Type: Judgment Date: 10 November 2011 Articles: Y: 5§1; N: 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) Links: English only	*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 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

Translations: not available	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: not available	*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	*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.

Date: 20 December 2011 Articles: N: 8 Keywords: – asylum – expulsion – family life (separation of family) Links: English only Translations: not available	*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 Type: Judgment Date: 20 December 2011 Articles: N: 3 Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	*Circumstances:* Expulsion of an Afghan national from the United Kingdom to Afghanistan after having been denied asylum. The applicant's father was politically active in the Communist People's Democratic Party of Afghanistan (PDPA), while his older brother obtained asylum in the 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 – ill-treatment – interim measure Links: French only Translations: not available	*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. 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:	*Circumstances:* Extradition from the United States to Latvia for the purposes of criminal prosecution. *Relevant complaints:* The applicant complained about the refusal of the Latvian courts to consider the time he had spent in custody in the United States as a part of his detention on remand in Latvia. *Court's conclusions:* 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.

– custody (judicial review) – custody (length) – extradition (custody) Links: English only Translations: not available	*[para. 63]*
Ananyev and others v. Russia No.: 42525/07 & 60800/08 Type: Judgment Date: 10 January 2012 Articles: Y: 3 Keywords: – ill-treatment Links: English only Translations: not available	*Circumstances:* No direct connection with mutual judicial cooperation in criminal matters (purely domestic criminal proceedings), relevant for assessing real risk of violation of Article 3 of the Convention. *Relevant complaints:* 1. Unsatisfactory conditions of detention in remand prisons represented a structural problem in Russia. Repeated applications to the Court in connection with this issue proved the existence and reality of the problem. Although the Russian authorities had undertaken some insignificant and sporadic measures to improve the conditions, those measures had proved to be insufficient owing to inadequate financing and the extensive use of custodial measures as a means of prevention. 2. The applicants complained under Article 3 of the Convention that they had been detained at remand prisons IZ-67/1 (Mr Ananyev) and IZ-30/1 (Mr Bashirov) in conditions that had been so harsh as to constitute inhuman and degrading treatment in breach of this provision. *Court's conclusions:* 1. For the time being the Russian legal system does not dispose of an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint about inadequate conditions of detention. *[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: not available	*Circumstances:* Extradition from the United Kingdom to the United States of America for the purposes of prosecution that could result in imposition of death penalty or life imprisonment without parole. Interim measure complied with. *Relevant 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	*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

Articles: Y: 6; N: 3, 5 Keywords: – assurances – asylum – expulsion – fair trial – ill-treatment Links: English only Translations: not available	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. 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	*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

Keywords: – custody (judicial review) – custody (lawfulness) – expulsion – ill-treatment Links: French only Translations: not available	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)	*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

– expulsion – ill-treatment Links: English only Translations: not available	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: not available	*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: not available	*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	*Circumstances:* Conditions of detention of twelve Greek nationals and one Somali national in the Greek

No.: 11463/09 Type: Judgment Date: 28 February 2012 Articles: Y: 3 Keyword: – ill-treatment Links: French only Translations: not available	prison of Ioannina. *Relevant complaint:* The applicants claimed that the conditions of detention did not meet the national and international standards and are therefore likely to cause them serious physical and psychological suffering. They claimed that they lived and slept in confined and overcrowded cells or dormitories with no tables or chairs or free room to move, that they spent 18 hours a day in dormitories where they had to stay on their beds and that several of them did not receive treatment for the diseases they suffered from. *Court's conclusions:* Article 3 of the Convention imposes on the State the obligation to ensure that all prisoners are detained in conditions compatible with respect for their human dignity and that the method of execution of the measure does not subject them to distress or to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Recalling that serious prison overpopulation raises an issue under Article 3 of the Convention, the Court cannot however decide how much personal space must be allotted to each prisoner in terms of the Convention, as that issue may rely on many factors, such as the length of the deprivation of liberty, the possibility for outdoor exercise or the mental and physical condition of the prisoner. In cases where overcrowding alone was not such as to raise an issue under Article 3 of the Convention, other aspects of the conditions of detention must be taken into account such as the possibility to use the toilet privately, the ventilation system, the access natural light and air, the quality of heating and the respect for basic sanitary requirements. The Court does not intend to reconsider its jurisprudence according to which elements other than overcrowding or the personal space available for a prisoner may be taken into account when examining compliance with Article 3 requirements. The possibility to move outside of the dormitory is one of those elements. However, such a factor, taken alone, cannot be considered of such importance so as to tip the scales in favour of a finding of non-violation of Article 3 of the Convention. The Court must also weigh the form and the duration of the freedom of movement against the global duration of detention and the general conditions which prevail within the prison. The Court notes that the period of time during which the applicants worked only constituted a limited fraction of the total duration of their imprisonment. *[paras. 56, 57, 59, 63 and 65]*
Atmaca v. Germany No.: 45293/06 Type: Decision Date: 6 March 2012 Articles: – Keywords: – interim measure	*Circumstances:* Extradition from Germany to Turkey for the purposes of prosecution of a person who has been active in the PKK (the Kurdistan Workers' Party) and sought asylum in Germany. Interim measure complied with. *Relevant complaint:* The applicant complained that he ran a risk of being tortured and being exposed to degrading prison conditions and that he would be convicted in an unfair trial if extradited to Turkey. *Court's conclusions:* The decision of the Federal Ministry of Justice whether or not to authorise the applicant's extradition to Turkey, which had initially been scheduled for 18 July 2007, has not been taken

Links: English only Translations: not available	to date. The Court observes in this connection that the proceedings before the Federal Ministry of Justice for the authorisation of the applicant's extradition have already been pending for some four-and-a-half years without any decision having been taken. It further notes that these proceedings cannot be considered as a remedy "available" to the applicant to afford redress in respect of the breaches of the Convention alleged, for the purposes of the requirement of exhaustion of domestic remedies under Article 35§1 of the Convention. It is not within the applicant's power to institute these proceedings. The Government have accordingly not pleaded that the applicant failed to exhaust domestic remedies as a result of the fact that the proceedings before the Federal Ministry of Justice were still pending. Nevertheless, the Federal Ministry of Justice's decision on the authorisation of the applicant's extradition is a precondition for the domestic courts' decision that his extradition was permissible to become enforceable. The Court regrets in that context that the Ministry's decision on whether or not to authorise the applicant's extradition has apparently been adjourned by reference, *inter alia*, to the Court's decision to indicate to the German Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Turkey until further notice. The application of Rule 39 only aimed at suspending the *execution* of a decision by the domestic authorities to extradite the applicant. It did not prevent the Government from deciding at any moment whether or not the applicant should be extradited. *[pages 15 and 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: not available	*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	*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.

Type: Judgment Date: 10 April 2012 Articles: N: 3 Keywords: – assurances – extradition (grounds for refusal) – ill-treatment – life sentence Links: English only Translations: not available	*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 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: not available	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) Links: English only Translations: not available	*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 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: not available	*Circumstances:* Expulsion from Austria to Russia of a Chechen who had been granted asylum status in Austria that has been subsequently lifted. Interim measure complied with. *Relevant complaints:* 1. The country reports consulted had shown that there were still grave human rights violations in Chechnya and that the security services very often resorted to violence and abuse. Rebels, or people considered rebels or friends of rebels, were at risk of being detained, of disappearing and/or of being tortured. However, the Austrian authorities had not drawn the right conclusions on the basis of those reports and the original reasons for the applicant's flight when they allowed his asylum status to be lifted. 2. The applicant's wife and the two children had independent asylum status in Austria. In those asylum decisions, the Independent Asylum Panel explicitly stated that the applicant's wife had a well-founded fear of independent persecution if she returned to the Russian Federation. It followed that the applicant's wife and children could not reasonably be expected to follow the applicant to the Russian Federation to maintain family life; in fact, an expulsion of the applicant to the Russian Federation would render any effective family relations impossible. *Court's conclusions:* 1. The applicant had acted in a supporting role during the first war, which ended in 1996. He had not taken any part in the second war in Chechnya. The Court thus finds that considerable time has passed since the first Chechen war. In this context, the Court refers to the report of the Danish Immigration Service's fact-finding mission, which stated that even active participants in the first war were not at risk of being persecuted by the present Chechen authorities. His family, namely his parents and six siblings, continued to live in Chechnya after the applicant had left and had not reported, according to the applicant's own statement, any harassment or abusive behaviour by local or federal security forces in the region. The applicant had kept in regular telephone contact with his father; it is therefore likely that he would have known of any punitive actions against his relatives in Chechnya. In view of the repeatedly reported practice of abuse of relatives of alleged rebels or supporters and sympathisers, it therefore seems that the applicant is not considered to belong to either of these groups. Overall, it

	seems that in spite of certain improvements, the general security situation in Chechnya cannot be considered safe. However, the applicant's individual situation does not show substantial grounds for believing that he would be at a real risk of ill-treatment within the meaning of Article 3 of the Convention if he returned to the Russian Federation. *[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. 150]* 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: not available	*Circumstances:* Expulsion from Estonia to Russia of HIV-positive person, previously deported from Sweden to Estonia, who had been born and raised in Estonia and had no ties in Russia. *Relevant complaint:* The applicant had spent his whole life in Estonia and being a second-generation immigrant had no ties whatsoever with any other country. Therefore, he deserved increased protection under the Convention. *Court's conclusions:* Although the applicant argued that he had close family ties with his father, who lived in Estonia, and that they were dependent upon one another owing to his illness and his father's advanced age, the Court is not convinced that these relations extended beyond usual ties between grown-up family members. *[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) – extradition (custody) – extradition (grounds for refusal) – ill-treatment	*Circumstances:* Extradition from Russia to Uzbekistan for the purposes of prosecution for membership in an extremist religious organization of a person granted temporary asylum in Russia. Interim measure complied with. *Relevant complaints:* 1. The applicant's extradition to Uzbekistan would subject him to a real risk of ill-treatment. None of the Russian authorities had properly examined his claim that he would be exposed to a risk of being subjected to ill-treatment if extradited to Uzbekistan. Those authorities had only relied on the material obtained from the Russian governmental agencies. No attempt had been made to study reliable independent sources. 2. The applicant's detention had not been justified, as the extradition proceedings had not been and were not being pursued with the requisite diligence, in particular after the Court's indication of interim measure. *Court's conclusions:*

– interim measure Links: English only Translations: not available	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:	*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

– assurances – asylum – custody (judicial review) – custody (lawfulness) – custody (length) – extradition (custody) – extradition (grounds for refusal) – ill-treatment – interim measure Links: English only Translations: not available	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]*
Lee Summerfield Rushing v. The Netherlands **No.: 3325/10** **Type: Decision** **Date: 27 November 2012** **Articles: N: 3**	*Circumstances:* Extradition of a US national to the US 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

Keywords: - extradition - assurances - ill treatment - life sentences Links: English only Translations: not available	sentence. From the information provided by the US it is clear that in this case, a mandatory life sentence is excluded: he would face a mandatory sentence of 10 years of imprisonment. The Court further considers that 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 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 sentence for similar offences, it is unlikely that the applicant would be sentenced to a mandatory 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	*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

Keywords: – asylum – expulsion – ill-treatment Links: English only Translations: not available	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	*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.

Links: English only Translations: not available	*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)	*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.

– extradition (grounds for refusal) – ill-treatment – interim measure – relation between extradition and deportation or expulsion Links: English only Translations: not available	*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: – assurances – custody (judicial review) – custody (lawfulness) – extradition (custody) – extradition (grounds for refusal) – fair trial – ill-treatment Links: English Translations: not available	*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 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	*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

Translations: not available	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: not available	*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 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	*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 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 persist. 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]*
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 – ill-treatment Links: English only Translations: not available	*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 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 Nos.: 66069/09, 130/10 & 3896/10 Type: Judgment [GC] Date: 9 July 2013 Articles: Y: 3 Keywords: – life sentence Links: English, French Translations: not available	*Circumstances:* Life sentences served in the United Kingdom. *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]*
Zarmayev v. Belgium No.: 35/10 Type: Judgment Date: 27 February 2014 Articles: N: 3, dismissed : 6 Keywords: - extradition - assurances – rule of speciality Links: English, French Translations: not available	*Circumstances:* Extradition of a Chechen suspect of murder to Russia. *Relevant complaints:* The person sought alleged to be a former rebel during both Chechen wars. He tried to obtain asylum on several occasions. He fears to be subjected to article 3 violations because of his past. The guarantees that Russia has provided are not sufficient. *Court's conclusion:* Diplomatic assurances that were provided are a pertinent factor to be taken into account when evaluating the alleged serious risk of a violartion of article 3. In order to assess the quality of the assurances and their reliability, the Court takes into account a series of elements which are enumerated in Othman v. UK. In the case of Zarmayev, he pretended to be prosecuted for other reasons than those stated in the extradition request. Since the requested State has evaluated all relevant elements, both general and individual and given the fact that Zarmayev is not simply to be removed to Russia but extradited, he is protected by the speciality principle. The assurances provided by Russia were deemed reliable in view of earlier decisions in similar cases such as Chentiev and Ibragimov v. Slovakia and Gasayev v. Spain.

	(paras, 92-93 and 95-114). *Remark:* There is one dissenting opinion.
Trabelsi v. Belgium No.: 140/10 Type: Judgment Date: 4 September 2014 Articles: Y: 3, 34 Keywords: - extradition - assurances - ill treatment - life sentences - provisional measures - rule of speciality Links: English, French Translations: not available	*Circumstances:* Extradition of a Tunisian suspect of terrorism offences to the USA. Belgium surrendered Trabelsi to the US despite the provisional measure that was imposed. Provisional measure not complied with. *Relevant complaints:* The person sought risks to be sentenced to a life sentence without the possibility to obtain parole. Other elements of the application relate to article 6 and ne bis in idem. These were dismissed. *Court's conclusion:* Given the Court's principles from Vintner (GC) and the preventive character of article 3, the reasoning whereby the Vinter criteria should only apply at the time the sentence is imposed can no longer be maintained. In accordance with Soering, the existence of a risk of a violation of article 3 should be evaluated ex ante and not ex post facto. The assurances provided by the US with regard to application of life sentences were deemed to be general and vague. The person sought risks to be sentenced to a life sentence that is not, from the onset, compressible in the sense of Vinter (paras 115, 116-120 and 130-138). *Belgium violated article 34 by surrendering Trabelsi to the US. Belgium requested the measure to be lifted on four occasions.* *Remark:* There is one concurring opinion.
Ibragimov v. Slovakia No.: 65916/10 Type: Decision Date: 30 June 2015 Articles: N: 3, N:13, N : 6 Keywords: – Extradition (grounds for refusal)	*Circumstances:* Extradition of one of two Russian nationals of Chechen ethnic origin from Slovakia to Russia. Both applicants were suspected of taking part as members of an organised group, in the killing of two agents of the Ministry of the Interior in Grozny in June 2001. *Relevant complaint:* The applicant filed a second complaint alleging that his extradition to the Russian Federation would amount to a breach of his rights under Art. 3 and 13 and Art. 6. The applicant filed a new asylum claim in Slovakia on 6 December 2010 (§§23 -32). The applicant further invoked medical and psychological issues, and other problems (§33), including injuries sustained during his detention (§34) and he referred to earlier similar cases (§§36-37).

– Death penalty – Ill-treatment Links: English Translations: not available	*Court's conclusions:* Neither the Convention nor its Protocols contain the right to political asylum. Also the right not to be extradited is not one of the rights and freedoms recognised by the Convention and its Protocols (§51). In re-assessing the situation of the applicant in view of the alleged relevant new information (since the initial application n° 51946/08), the Court questioned whether such elements could already have been submitted in the context of the first application (§57). The Court found that the new elements like the detention situation in Russia was not subject of domestic remedies and that the remainder of the complaints were dealt with by the Slovak courts. The guarantees provided by Russia were deemed sufficient. Moreover, the Russian Federation confirmed the validity of all such guarantees. In the case of Chentiev, the respective authorities of the respondent government acted upon the guarantees by visiting Chentiev and established that these guarantees were in fact being respected. The validity of the guarantees was not undermined by other (similar) individual cases and additional material from various sources relied upon by the applicant: a mere possibility of ill-treatment in circumstances similar to those of the present case is not in itself sufficient to give rise to a breach of Art. 3. As to the other material, the Court is of the opinion that its relevance is diminished by the fact that it all dates from and refers to events having taken place in 2011 and earlier, while the risk of ill-treatment is to be assessed with reference to the circumstances obtaining at the present time. (§§69-76). As to the complaint regarding Art. 6, invoking the 'invented nature' of the charges against him and the reliance on evidence allegedly obtained under torture (of others): the Court reiterates that an issue might exceptionally be raised under Art. 6 by an extradition decision in circumstances where the fugitive suffered or risked suffering a flagrant denial of a fair trial in the requesting country (§82). On the basis of all the available material, including the specific and renewed assurances, there are no reasons for reaching a different conclusion from that reached in the decision of 14 September 2010. *Note:* This decision was taken following the decision dated 21 February 2010 declaring the second application partially admissible. This decision essentially confirms the decision re. *Chentiev and Ibragimov v. Slovakia* (nos.: 21022/08 & 51946/08) taking into account some new / recent developments re. Ibragimov, as well as the final decision dated 15 April 2014 declaring the remainder of the second application re. Chentiev (n° 27145/14) inadmissible.
K. and Others v. Sweden No.: 59166/12 Type: Judgment GC Date: 23 August 2016	*Circumstances:* The applicants, three Iraqi nationals, applied for asylum in Sweden, alleging that they risked persecution in Iraq by Al-Quaeda having had work links with the United States of America and having already been subject to persecution previously. Their request was rejected; the Migration Court upheld the decision not to grant asylum. A Chamber of the European Court upheld the decision. The case

Articles: 3 Keywords: – Torture – Asylum – Deportation Links: English, French Translations: not available	was finally referred to the Grand Chamber. On 22 November 2011 the Migration Agency rejected the applicants' asylum application. In respect of the Iraqi authorities' ability to provide protection against persecution by non-State actors, the Agency stated that the Iraqi security forces had been reinforced significantly and that the current country information also showed that it had become more difficult for Al-Qaeda to operate freely in Iraq and that there had been a significant decline in sectarian violence. The Migration Court upheld the Migration Agency's decision. The applicants appealed to the Migration Court of Appeal (Migrationsöverdomstolen). Their request in appeal was refused. *Relevant complaint:* the applicants claimed their rights as aliens to enter and to remain in Sweden and to be considered a refugees or otherwise in need of protection. They contended that if the first applicant were to be deported to his home country, he would necessarily have to be in contact with government agencies. If a threat from government agencies had existed before he had fled to Sweden, the threat would continue to exist upon his return. They accordingly relied on the violation of Article 3 of the Convention. *Court's conclusions:* The Court stated that the applicant's deportation would constitute a violation of Article 3 of the Convention. It noted, as a general principle, that as asylum-seekers were normally the only parties able to provide information about their own personal circumstances, the burden of proof should in principle lie with them to submit all evidence relating to their individual circumstances. It furthermore observed that it was also important to take into account all the difficulties which asylum seekers could encounter abroad when collecting evidence. In this case the Court actually recalled that various reports (the Office of UN High Commissioner for Refugees 2014 report and the Human Rights Watch's World Report 2015 on Iraq) and other reliable sources showed that persons who collaborated in different ways with the authorities of the occupying powers in Iraq after the war had been and continued to be targeted by Al-Qaeda. It concluded that the applicants, if deported to Iraq, would have faced a serious risk of continued persecution by non-State actors. It added that in fact the Iraqi authorities' capacity to protect their people should be considered considerably diminished with regard to individuals, such as the applicant, who are members of a targeted group.
Nasr and Ghali v. Italy (Abu Omar) No.: 44883/09 Type: Judgment Date 23 February 2016 Articles: Y: 3,5,8,13	*Circumstances:* The case concerned an extrajudicial transfer (or "extraordinary rendition"), namely the abduction by CIA agents, with the co-operation of Italian secret service officials, of the Egyptian imam Osama Mustafa Hassan Nasr, also known as Abu Omar, who had been granted political asylum in Italy, and his subsequent transfer to Egypt, where he was held in secret for several months. It is to be noted that criminal proceedings were pending against the applicant. Mr Nasr was suspected, among other offences, of conspiracy to commit international terrorist acts, and his links to fundamentalist networks were investigated by the Milan public prosecutor's office (later on, on 6 December 2013, the Milan District

Keywords : -Extradition -Extraordinary rendition -Lack of effective remedies because of secrecy posed by Government -Impunity granted because of omitting to seek extradition and because of granting mercy Links: French Translation: Italian	Court convicted Mr Nasr of membership of a terrorist organisation). Mr Nasr was abducted and taken to the Aviano NATO air base operated by USAFE (United States Air Forces in Europe), where he was put on a plane bound for the Ramstein US air base in Germany and finally brought to Egypt where he was ill-treated and tortured. Ms Ghali had reported her husband's disappearance to the police. The public prosecutor's office in Milan immediately started an investigation into abduction by an unknown person or persons. Following the investigation, a number of Italian secret services officials and American CIA agents were prosecuted and tried. No extradition for prosecution was ever sought in regard to the 22 American citizens sought by Italian justice. The Italian Prime Minister stated that the information and documents requested by the public prosecutor's office were covered by State secrecy and that the conditions for lifting that secrecy were not met. In a judgment of 18 March 2009 the Constitutional Court held that the interests protected by State secrecy took precedence. The case against the Italian officials had to be discontinued because of the secrecy imposed. 22 CIA operatives and high-ranking officials, and one US army officer, were convicted *in absentia* of Mr Nasr's abduction and were given prison sentences of between six and nine years. *Relevant complaint:* Mr Nasr's complaint concerned his abduction, in which the Italian authorities had been involved, the ill-treatment to which he had been subjected during his transfer and detention, the fact that those responsible had been granted impunity owing to the application of State secrecy, and the fact that the sentences imposed on the convicted US nationals had not been enforced because of the refusal of the Italian authorities to request their extradition. Both applicants alleged, among other violations, a breach of Article 8 (right to respect for private and family life) in that Mr Nasr's abduction and detention had resulted in their forced separation for over five years. *Court's conclusions:* Relying on previous decisions, the Court also mentioned Marty's Report of the Council of Europe on extraordinary rendition and found that there was a violation of Article 3 to that regard, and also in relation to Articles 8 and 13 of the Convention. As to the last issue, the Court mentioned that Italy did not ensure the respect of the right of the applicants to have an effective inquiry conducted on the abduction due to the position of the Italian defendants because of the imposition of secrecy and due to the position of the American CIA and diplomatic officials because of the refusal to ask for extradition in view of prosecution to the USA. The refusal to seek the surrender of the American citizens after the sentence became final was also deemed to be contrary to Article 13 and resumed as ensuring the impunity of people involved. *NOTE: The Court's decision is to be considered relevant as case-law for the following reasons: 1. Italy was considered responsible for not having sought extradition from the USA; 2. Italy was considered*

	responsible for not having asked for extradition to the USA; 3. Italy was considered responsible because the Italian constitutional court upheld the imposition of the secrecy enforced by the Government; 4. Italy was considered responsible because the President of Republic granted mercy to some of the sentenced American persons. The interest of the decision lies in particular in the fact that the granting of mercy is traditionally considered to be a sovereign power; according to the Court's decision such a decision can be scrutinized by the Court. Likewise, any political decision on granting extradition or not may be under scrutiny as well.

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*
A. M. v. Italy No.: 37019/97 Type: Judgment Date: 14 December 1999 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English, French Translations: not available	*Circumstances:* Mutual legal assistance (hearing of witnesses) obtained by Italy from the United States of America. *Relevant complaints:* 1. Statements made outside Italian territory cannot be read out in trial in Italy. The acts performed pursuant to the rogatory letters were invalid and maintained that the fact that they had been read out at the applicant's trial had denied him any opportunity to examine his accusers. 2. As to the possibility of seeking examination of the witnesses under the Mutual Assistance Treaty, the rogatory letters had been issued without the applicant's knowledge and, as a result, he had been unable to exercise the rights and liberties afforded by Article 14 of that Treaty. *Court's conclusions:* 1. The rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 of the Convention if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial. In convicting the applicant in the instant case the domestic courts relied solely on the statements made in the United States before trial and that the applicant was at no stage in the proceedings confronted with his accusers. *[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)	*Circumstances:* Mutual legal assistance (hearing of witnesses) obtained by FYROM from the United States of America. *Relevant complaint:* Trial in FYROM was unfair, as the applicant had been unable to cross-examine the witnesses whose statements served as the only basis for his conviction and that he had been unable to obtain the attendance and examination of two witnesses for the defence.

Keywords: – fair trial – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English, French Translations: not available	*Court's conclusions:* All the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. This does not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in court: to use as evidence such statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs 3(d) and 1 of Article 6 of the Convention, provided the rights of the defence have been respected. As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage. There is no indication that the applicant or his second lawyer expressed any intention to attend the cross-examination of the witnesses in the United States. In particular, the applicant declared before the investigating judge that he had left the decision whether or not to go to the United States to his second lawyer and that he had sufficient means to cover the travel expenses. The applicant's second lawyer never filed an application for a visa with the United States embassy and never requested the postponement of the hearing of the witnesses in case he thought he did not have sufficient time to obtain it. Moreover, the applicant's first lawyer never renewed his application for a visa. The present case can be distinguished from A.M. v. Italy where the witnesses were questioned by a police officer before trial and the applicant's lawyer was not allowed to attend their examination. *[paras. 57, 60 and 63]*
Somogyi v. Italy No.: 67972/01 Type: Judgment Date: 18 May 2004 Articles: Y: 6 Keywords: – fair trial – in absentia – mutual assistance (service of documents) Links: English, French Translations: not available	*Circumstances:* In absentia judgment issued in Italy after serving summons on the applicant in Hungary by post and his failure to appear at trial. *Relevant complaints:* 1. The applicant had been convicted in his absence without having the opportunity to defend himself before the Italian courts. He had not received any information about the opening of proceedings against him, since the notice of the date of the preliminary hearing had never been served on him and the signature on the reply slip acknowledging receipt of the letter from the Rimini preliminary investigations judge was not his. as there was a reasonable doubt about the authenticity of the signature on the reply slip acknowledging receipt of the letter from the Rimini preliminary investigations judge, the Italian courts should have ordered a report from a handwriting expert in order to be able to verify whether the defendant had been informed of the charges. 2. Service of the notice concerned had not been effected in accordance with the procedure provided for in the Italo-Hungarian agreement of 1977, which was mandatory for all notifications between the signatory States; it should therefore be considered null and void. *Court's conclusions:* 1. It could not be considered that the applicant's allegations concerning the authenticity of the signature were prima facie without foundation, particularly in view of the difference between the signatures he produced and the one on the return slip acknowledging receipt and the difference between the applicant's forename (Tamas)

	and that of the person who signed the slip (Thamas). In addition, the mistakes in the address were such as to raise serious doubts about the place to which the letter had been delivered. Article 6 of the Convention imposes on every national court an obligation to check whether the defendant has had the opportunity to apprise himself of the proceedings against him where, as in the instant case, this is disputed on a ground that does not immediately appear to be manifestly devoid of merit. In the instant case the means employed by the national authorities did not achieve the result required by Article 6 of the Convention. As regards the Government's assertion that the applicant had in any event learned of the proceedings through a journalist who had interviewed him or from the local press, the Court points out that to inform someone of a prosecution brought against him is a legal act of such importance that it must be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights, as is moreover clear from Article 6§3(a) of the Convention; vague and informal knowledge cannot suffice. *[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: not available	*Circumstances:* Hearing by videoconference in a domestic trial (no mutual legal assistance in fact involved). *Relevant complaint:* The applicant had been forced to participate by videoconference in the appeal hearings. *Court's conclusions:* Although the defendant's participation in the proceedings by videoconference is not as such contrary to the Convention, it is incumbent on the Court to ensure that recourse to this measure in any given case serves a legitimate aim and that the arrangements for the giving of evidence are compatible with the requirements of respect for due process, as laid down in Article 6 of the Convention. The applicant's participation in the appeal hearings by videoconference pursued legitimate aims under the Convention, namely, prevention of disorder, prevention of crime, protection of witnesses and victims of offences in respect of their rights to life, freedom and security, and compliance with the "reasonable time" requirement in judicial proceedings. *[paras. 67 and 72]*
Van Ingen v. Belgium	*Circumstances:* Mutual legal assistance obtained (hearings, selected copies from an investigation file) by 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	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 Links: English, French Translations: not available	*Circumstances:* Mutual assistance requested by Russia from Cyprus. *Relevant complaint:* The Russian authorities should have applied to the Cypriot authorities under the Legal Assistance Treaty to initiate criminal proceedings, as the applicant had requested. Instead, the Russian authorities merely sought information concerning the circumstances of Ms. Rantseva's death. His repeated requests that Russian authorities take statements from two Russian nationals resident in Russia were refused as the Russian authorities considered that they were unable to take the action requested without a legal assistance request from the Cypriot authorities. *Court's conclusions:* Ms. Rantseva's death took place in Cyprus. Article 2 of the Convention does not require member States' criminal laws to provide for universal jurisdiction in cases involving the death of one of their nationals. Accordingly, unless it can be shown that there are special features in the present case which require a departure from the general approach, the obligation to ensure an effective official investigation applies to Cyprus alone. For an investigation into a death to be effective, member States must take such steps as are necessary and available in order to secure relevant evidence, whether or not it is located in the territory of the investigating State. The Court observes that both Cyprus and Russia are parties to the Mutual Assistance Convention and have, in addition, concluded the bilateral Legal Assistance Treaty. These instruments set out a clear procedure by which the Cypriot authorities could have sought assistance from Russia in investigating the circumstances of

	Ms. Rantseva's stay in Cyprus and her subsequent death. In the absence of a legal assistance request, the Russian authorities were not required under Article 2 of the Convention to secure the evidence themselves. *[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 – mutual assistance (admissibility of evidence) – mutual assistance (hearing witnesses) Links: English only Translations: not available	*Circumstances:* Mutual assistance requested by Ukraine from Russia. *Relevant complaint:* The prosecutor had been present during the questioning of the witnesses in Russia, while the applicant's representative had not been. *Court's conclusions:* The domestic authorities examined different ways of obtaining the statements and opted for the questioning of the witnesses in Russia through the international legal assistance mechanism. Such a solution, to which the defence did not object, could be found reasonable. However, in the circumstances of the case it led to the situation in which the applicant found himself convicted of a very serious crime mainly on the basis of evidence given by witnesses none of whom were present during his trial in Ukraine. The domestic courts did not hear the direct evidence of these witnesses and the applicant had no opportunity to cross-examine them. Being aware of difficulties in securing the right of the applicant to examine the witnesses in the present case, the Court considers that the available modern technologies could offer more interactive type of questioning of witnesses abroad, like a video link. The domestic authorities on their part had at least to ensure that they were informed in advance about the date and place of hearing and about questions formulated by the domestic authorities in the present case. Such information would give the applicant and his lawyer reasonable opportunity to request for clarifying or complementing certain questions that would deem important. *[paras. 45 and 46]*
Adamov v. Switzerland	*See List B*
Stojkovic v. France and Belgium No.: 25303/08 Type: Judgment Date: 27 October 2011 Articles: Y: 6§1, 6§3(c) Keywords: – fair trial – mutual assistance (hearing witnesses) Links: French only Translations: not available	*Circumstances:* French letter of request to Belgium requesting that the applicant be questioned as a "legally assisted witness" in the presence of an attorney. *Relevant complaint:* The applicant claimed that there was a violation of his defence rights as he had been questioned as a "legally assisted witness" by Belgian police without an attorney being present. He argued that an accusation cannot be based on evidence obtained through coercion or pressure and that the interest of Justice required that he should have been assisted by an attorney. *Court's conclusions:* The applicant's interview was conducted in accordance with the procedural regime applicable in Belgium, which provided for the questioning of all persons without any difference in treatment, whether or not there were any suspicions against them. The interview resulted exclusively from the execution of the letter of request. In that letter of request, the judge expressly stipulated that the applicant should be heard as a "legally assisted witness". That stipulation demonstrated, as required by French law, that there was evidence against the applicant which it made it plausible that he might have taken part in the perpetration of the offences. The interview had important repercussions on the applicant's situation so that there was a "criminal charge

	against him" which implied that he should have benefited from the protection offered under Article 6§1 and 6§3 of the Convention. While the restriction of the right concerned was not caused by French authorities, it was their duty to ensure that such a restriction did not compromise the fairness of the proceedings. The legal regime of the interview did not exempt the French authorities from verifying that it had been conducted in accordance with fundamental principles deriving from fair trial. Under Article 1 of the Convention, it was for the French authorities to ensure that the acts carried out in Belgium had not been in breach of the rights of the defence and thus to verify the fairness of the proceedings under their supervision. *[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: not available	*Circumstances:* The applicant has been convicted in Poland on the basis of a statement of JH (present in the United States of America), whose presence in Poland has not been ensured by the trial court. *Relevant complaint:* The applicant's defence rights had been unduly curtailed as he could not cross-examine JH. The trial court had known JH's address in the USA but had not taken any action to secure his presence. *Court's 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)	*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

Links: English only Translations: not available	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]*
Tseber v. Czech Republic	*Circumstances:* Conviction on the basis of interrogation of a witness (in the presence of a judge) before pre-trial

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: not available	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: not available	*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]*

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)

Case Data	*Summary*
Drozd and Janousek v. France and Spain No.: 12747/87 Type: Judgment Date: 26 June 1992 Articles: N: 5§1, 6 Keywords: – fair trial – transfer of sentenced persons Links: English, French Translations: Slovenian	*Circumstances:* Serving a sentence of imprisonment, imposed in Andorra, in France or Spain. *Relevant complaint:* The applicants claimed that their detention was contrary to French public policy (*ordre public*), of which the Convention formed part; the French courts had not carried out any review of the judgments of an Andorran court whose composition and procedure had not complied with the requirements of Article 6 of the Convention. *Court's conclusion:* As the Convention does not require the Contracting Parties to impose its standards on third States or territories, France was not obliged to verify whether the proceedings which resulted in the conviction were compatible with all the requirements of Article 6 of the Convention. To require such a review of the manner in which a court not bound by the Convention had applied the principles enshrined in Article 6 of the Convention would also thwart the current trend towards strengthening international cooperation in the administration of justice, a trend which is in principle in the interests of the persons concerned. The Contracting States are, however, obliged to refuse their co-operation if it emerges that the conviction is the result of a flagrant denial of justice. *[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: Georgian, Slovenian	*Circumstances:* A Netherlands and Moroccan national serving a sentence of imprisonment in France. *Relevant complaint:* As part of his complaint concerning ill-treatment in the French prison, the applicant requested to be transferred to the Netherlands to serve the remainder by the sentence there. *Court's conclusions:* The Court reiterated that Article 41 of the Convention does not give it jurisdiction to make an order for transfer against a Contracting State. *[para. 126]*
Veermäe v. Finland No.: 38704/03 Type: Decision Date: 15 March 2005	*Circumstances:* Transfer of an Estonian national from Finland to Estonia under Article 3 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons. *Relevant complaint:* The applicant argued that in Finland, it would be possible to be released on parole after serving half his sentence, while in Estonia release on parole would only be possible after serving two-thirds of the

Articles: N: 3, 5, 6, 14; 4 (Prot. 7) Keywords: – discrimination – expulsion – fair trial – ill-treatment – ne bis in idem – transfer of sentenced persons (Additional Protocol, Article 3) – transfer of sentenced persons (conversion of sentence) – transfer of sentenced persons (early release) Links: English, French Translations: not available	sentence. *Court's conclusions:* The Court examined of its on motion whether the application raises an issue under Article 6 of the Convention, as the relevant question is whether the transfer, with the risk of a de facto longer sentence, violates Article 5 of the Convention and whether the transfer arrangements require a procedure offering the guarantees of Article 6 of the Convention. The possibility of a longer period of imprisonment in the administering State does not in itself render the deprivation of liberty arbitrary as long as the sentence to be served does not exceed the sentence imposed in the criminal proceedings. A flagrantly longer de facto sentence in the administering State could nevertheless give rise to an issue under Article 5 of the Convention. However, in view of the information concerning the Estonian practice in converting sentences, according to which a penalty imposed in Estonia would be likely to be less severe than a penalty imposed in Finland, the Court considered that there were no substantial grounds for believing that the sentence to be served would be flagrantly disproportionate, if disproportionate at all. As the conversion of the sentence will be determined by a Finnish court, no issue arises under Article 6 of the Convention. *[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. As a transfer is seen as a measure of execution of a sentence and the Convention on the Transfer of Sentenced Persons provides that the administering State may decide on the

– transfer of sentenced persons (early release) Links: English only Translations: not available	enforcement of the sentence in accordance with its own laws, Article 6 of the Convention is not applicable to transfer decisions. Even if the Additional Protocol to the Transfer Convention was not in force in Sweden at the time of the commission of the offence, under the terms of Article 7 of the Additional Protocol it was still applicable to any enforcement of the sentence taking place after its entry into force. Furthermore, transfer decisions cannot be considered as amounting to a "penalty" within the meaning of Article 7 of the Convention. *[pages 9, 11, 12 and 13]*
Garkavyy v. Ukraine No.: 25978/07 Type: Judgment Date: 18 February 2010 Articles: Y: 5§1 Keywords: – custody (lawfulness) – extradition (custody) – in absentia – international validity of criminal judgments – transfer of enforcement of sentence – transfer of proceedings – transfer of sentenced persons (Additional Protocol, Article 2) Links: English only Translations: not available	*Circumstances:* Ukrainian national, convicted and sentenced in the Czech Republic in absentia, was arrested in Ukraine on the basis of an international arrest warrant issued against him by the Czech Republic and remanded in custody for 40 days under Article 16 of the European Convention on Extradition. The Czech Republic did not request extradition but instead requested that Ukraine takes over criminal proceedings from the Czech Republic under Article 8(2) of the European Convention on the Transfer of Proceedings in Criminal Matters. Instead, Ukraine treated this request as a request under the European Convention on the International Validity of Criminal Judgments (without being asked to do so by the Czech Republic, even though the Czech Republic is not a State Party to it and even though Ukraine made a reservation to it excluding in absentia judgments) and further extended the applicant's custody under its Articles 32 and 33. Subsequently, Ukrainian courts attempted to apply the Convention on the Transfer of Sentenced Persons and recognize the in absentia 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: not available	*Circumstances:* The applicant, a Dutch national, was convicted by the Lübeck Regional Court of drug offences and sentences to tree and a half year of imprisonment. He had voluntarily returned from the Netherlands to stand trial in Germany after the Lübeck Public Prosecutor gave the applicant an assurance that the prosecution service would institute proceedings under Article 11 of the Convention on the Transfer of Sentenced Persons. However, the German Ministry of Justice refrained from lodging a formal application with the Netherlands. *Relevant complaint:* The applicant complained under Article 6§1 of the Convention about the domestic authorities' refusal to institute transfer proceedings under Article 11 of the Transfer Convention, contrary to the previous assurance given by the Public Prosecutor. *Court's conclusions:* Article 6§1 of the Convention under its criminal head is, under the specific circumstances of the present case, applicable to the proceedings concerning the applicant's transfer request in so far as they relate to the assurance given by the public prosecution during the criminal proceedings. The decision taken by the Justice Ministry on the transfer request does not solely depend on the public prosecutor's recommendations and on considerations regarding the execution of sentence, but also on considerations of foreign policy which fall within the core area of public law. It is therefore acceptable if this part of the decision is not subject to judicial review. However, it has not been shown that there was a possibility of instituting an effective action for review of the refusal to institute proceedings after a relevant assurance. The applicant has been denied access to a court with regard to the part of the decision on his transfer request which did not concern considerations of public policy. *[paras. 43, 42, 61 and 62]*

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: not available	*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 No.: 43759/10 & 43771/12 Type: Decision Date: 18 January 2013	*Circumstances:* Transfer of two sentenced persons from the Thailand to the United Kingdom. *Relevant complaints:* 1. Continuing enforcement of the sentence, as imposed in Thailand, in the United Kingdom grossly disproportionate sentence and, therefore, capable of violating Article 3 of the Convention. Their sentences imposed in Thailand and enforced in the United Kingdom were four to five times as long as the sentences

Articles: N: 3, 5§1 Keywords: – fair trial – ill-treatment – transfer of sentenced persons Links: English, French Translations: Bosnian, Bulgarian, Hungarian, Montenegrin, Turkish, Ukrainian	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]* 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]*

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: – international validity of criminal judgments – transfer of enforcement of sentence – transfer of proceedings Links: English only Translations: not available	*Circumstances:* On 6 October 1997 the Italian authorities issued an arrest warrant against the applicant, an Albanian national, charging him with homicide. On 2 February 2001 he was sentenced in absentia to life imprisonment by the Milan Assize Court of Appeal on a count of murder and to five years of imprisonment for illegal possession of arms. On 16 February 2001 the Italian court issued a second arrest warrant, charging the applicant with participation in a criminal organisation and international narcotics trafficking. On 30 April 2001 Interpol Rome requested the Albanian authorities to initiate criminal proceedings against the applicant for his alleged involvement in drug trafficking committed on Italian territory. The applicant was arrested in Albania on 30 April 2001 on the basis of the arrest warrant issued on 16 February 2001 and sentenced finally by the Albanian Supreme Court on 23 June 2006 to 15 years of imprisonment. On 28 May 2002 the Italian Ministry of Justice transmitted the judgment of 2 February 2001 for information purposes to the Albanian Embassy in Rome, a request to validate the Italian sentence in Albania was not made, as neither country was party to any international agreement on the matter. On 15 May 2002 the Albanian District Court ordered the applicant's detention pending the proceedings for the validation and enforcement of the Milan Assize Court of Appeal's judgment of 2 February 2001. Article 514 of the Albanian CCP (before being amended by law of 13 June 2002) governing the proceedings for the validation and enforcement of a sentence imposed by a foreign court required the consent of the sentenced person. Though the applicant did not consent to the validation of the Italian judgment, the Albanian District Court held on 20 May 2003 that the sentence imposed by the Milan Assize Court of Appeal was compatible with the provisions of the Albanian CCP and ruled that the applicant should serve cumulative sentence of life imprisonment in Albania on a count of murder and a count of illegal possession of firearms. The applicant appealed in vain to the Court of Appeal, the Supreme Court and the Constitutional Court. *Relevant complaint:* The applicant's imprisonment from 15 May 2002 onwards had been unlawful amounting to a violation of Article 5§1 of the Convention. The applicant observed that, according to the Government's submissions, it was based on the general provisions of the European Convention on the Transfer of Proceedings in Criminal Matters, even though that Convention had not been ratified by Albania at the material time whereas, according to the court's decisions, his detention was based on the general provisions of international law. *Court's conclusions:* The detention of the applicant from 15 May 2002 onwards was contrary to Article 5§1 of the Convention, as the Supreme and Constitutional Courts confined themselves to considering that the "old" provision of Article 514 CCP was inadequate and that a legal basis could be provided by the generally recognised

	norms of international law in accordance with the principle of good will and reciprocity. The courts referred to the European Convention on the Internationals Validity of Criminal 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*

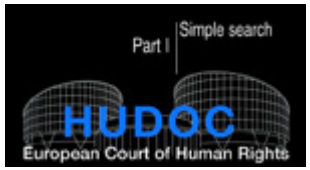
G. The HUDOC database

The search page to the database of the case law of the European Court of Human Rights can be accessed at this address: http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en.

To search for a judgment or a decision in the HUDOC database effectively, it is recommended
- that in the "ECHR Document Collections" column on the left, all boxes under the "HUDOC Collection" are ticked off (in order to search not only for judgments but also for decisions); and
- that under "Language", both English and French are ticked off (some judgments and decisions are in French version only or in English version only).

Your web browser needs to be set to allow "cookies", too [see your web browser's settings (privacy settings) if errors occur after attempted search].

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



HUDOC tutorial

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

- Watch video
- Video in high definition