Proposal for an update of the document on Case Law by the European Court of Human Rights of Relevance for the Application of the European Conventions on International Co Operation in Criminal Matters (Document PC-OC(2011)21REV15)

A. Index of keywords with relevant case law:

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seizure of assets – see *mutual assistance (seizure of assets)*		

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)

Sándor Varga and Others v. Hungary Nos.: 39734/15, 35530/16 & 26804/18 Type: Judgment Date: 17 June 2021	*See the summary of the similar case of T.P. and A.T. v. Hungary.*

Articles: Y: 3 Keywords: – ill-treatment – life sentence Links: English only Translations: not available	
Khachaturov v. Armenia No.: 59687/17 Type: Judgment Date: 24 June 2021 Articles: Y: 3 Keywords: – assurances – extradition (grounds for refusal) – extradition (procedure) – ill-treatment Links: English only Translations: Armenian	*Circumstances:* Extradition of a Russian national with chronic severe cardiovascular problems from Armenia to Russia for the purposes of prosecution. Following filing the application, the applicant requested asylum in Armenia. The Office of the Prosecutor General of Russia gave assurances that a doctor with the relevant specialisation would travel with a special convoy to provide the applicant with medical assistance if necessary during his transfer. Interim measure complied with. *Relevant complaint:* The applicant's extradition to Russia would be contrary to the requirements of Articles 2 and 3 of the Convention, considering the medical evidence in respect of the risks of his transfer. The assurances of the Office of the Prosecutor General of Russia were highly formalistic and superficial considering that the Russian authorities had not been provided with specific information concerning the applicant's state of health. *Court's conclusions:* Throughout the domestic proceedings and in the proceedings before the Court the Armenian authorities expressed doubts in relation to the applicant's medical condition and the claimed risks. Nevertheless, the authorities did not initiate their own assessment of the applicant's state of health and the applicant's request seeking the appointment of a forensic medical expert was refused by the Court of Appeal. Furthermore, neither in the domestic proceedings nor in the proceedings before the Court did the authorities question the reliability of the medical certificates submitted by the applicant or the credibility of the medical professionals who had issued them. While it is true that the applicant did not submit any medical documents concerning the history of his medical condition, such as the results of his past medical examinations and treatment received, if any, in his submission his state of health sharply worsened after 2015 as a result of the anxiety caused by his prosecution. The Prosecutor General made a decision to grant the request to extradite the applicant on 23 June 2017. Although by then the applicant had already been transferred to the Central Prison Hospital due to the deterioration of his health, there is nothing to indicate that the Prosecutor General was in possession of any medical documents concerning the applicant's state of health when taking the decision. Given that the assurances provided by the Russian authorities seem to have been limited merely to the availability of medical supervision during the applicant's transfer, they alone cannot provide a sufficient basis to conclude that the anticipated conditions of the transfer would remove the existing risk of a significant deterioration in the applicant's health if his removal from Armenia were to be effected. *[paras. 93, 95 and 103]*

Bancsók and László Magyar (no.2) v. Hungary Nos.: 52374/15 & 53364/15 Type: Judgment Date: 28 October 2021 Articles: Y: 3 Keywords: – ill-treatment – life sentence Links: English only Translations: not available	*See the summary of the similar cases of T.P. and A.T. v. Hungary and Vinter and others v. United Kingdom.*
De Sousa v. Portugal No.: 28/17 Type: Decision Date: 7 December 2021 Articles: N: 5§1(f), 5§5 Keywords: – assurances – custody (lawfulness) – extradition (custody) – extradition (procedure) – in absentia Links: French only Translations: not available	*Circumstances:* Arrest of a dual Portuguese and American national in Portugal on the basis of a European arrest warrant ("EAW") issued by Italian authorities for the purposes of her surrender to Italy in order to serve a sentence of imprisonment imposed in her absence for participation in a kidnapping committed as an agent of the United States Central Intelligence Agency. In the course of the surrender proceedings, the applicant's sentence was reduced following a presidential pardon issued in Italy. Subsequently, the Italian authorities lifted the EAW and the applicant was released from custody in Portugal and the surrender proceedings were closed. *Relevant complaint:* The purpose of the EAW was to enforce a judgment delivered in Italy, which constituted a flagrant denial of justice against her. The Portuguese authorities ordered her detention and issued a decision declaring the EAW enforceable on the wrong assumption that she would benefit from a new trial after her surrender to the Italian authorities. The Portuguese authorities were informed on 27 June 2016 by the Italian Central Authority that the criminal case would not be reopened after her surrender to the Italian authorities. They were slow to bring this information to her attention in order to give effect to the decision of the Court of Appeal, which had upheld the EAW. The applicant did not receive a copy of the Central Authority's letter until 10 October 2016, when she was informed by the Court of Appeal that the decision relating to the EAW was final and binding. The applicant has consistently asserted before the Portuguese authorities that her surrender to the Italian authorities contravened Council Framework Decision on the EAW given that she had been tried in absentia and that she had not benefited from a new trial in Italy. The Portuguese authorities did not seek to ascertain the reality of the situation, by requesting additional information in accordance with Article 15§2 and §3 of the Framework Decision on EAW. Neither did the Portuguese authorities seek to obtain diplomatic assurances as to the possibility of obtaining the reopening of the criminal proceedings. The Portuguese authorities applied the mutual recognition mechanism automatically and mechanically, to detriment to their fundamental rights. It was for the

	Italian and Portuguese authorities to cooperate in order to guarantee her fundamental rights, in particular by means of diplomatic assurances to that effect. *Court's conclusions:* The Court finds no element of bad faith on the part of the domestic authorities in the present case. It does not in fact appear that they resorted to inadmissible tricks or stratagems against the applicant. On the contrary, it appears from the case file that the authorities endeavored to correctly apply the domestic legislation and to respect the applicant's rights at the domestic level. Admittedly, it is apparent both from the decision of the Court of Appeal of 12 January 2016 and from the final judgment of the Supreme Court of 10 March 2016 that the Portuguese courts had initially believed understand that the applicant would benefit from a new trial, contrary to what was indicated in point 3.4. of the EAW form, namely that the applicant was simply informed of her right to a new procedure. However, such a misunderstanding does not mean that the second detention of the applicant, ordered at the end of the proceedings relating to the EAW, with a view to her surrender to the Italian authorities, was unlawful or that the title ordering the deprivation of liberty was prima facie invalid. Furthermore, following the letter from the Italian central authority clarifying the procedural rights of a person convicted in absentia in Italy, the Court of Appeal of Lisbon did note, in its decision of 6 October 2016, that it was up to the Italian authorities to guarantee the applicant's procedural rights, in accordance with Italian law, and that any request for clarification in this respect should be addressed to the Italian authorities and not to the Portuguese authorities, since the decision authorizing the surrender had become final, by virtue of the exhaustion of domestic remedies. The Lisbon Court of Appeal therefore corrected the error contained in the decision declaring the EAW enforceable by taking into account the applicant's arguments as to the circumstances which, according to her, prevented the execution of the EAW. As regards the applicant's argument that the Portuguese authorities, acting in bad faith, delayed bringing to her attention the Italian Central Authority's letter of 27 June 2016, the Court notes that the applicant received a copy of it on 10 October 2016, when the decision rendered a few days earlier by the Lisbon Court of Appeal on the said letter was notified to her. The Court of Appeal did not rule earlier because, in accordance with Article 92§1 of the CCP, it was awaiting a Portuguese translation of the letter in question, which was transmitted on 26 September 2016. It does not therefore appear that the Lisbon Court of Appeal deliberately delayed bringing the letter of 27 June 2016 to the applicant's attention. The Court fails to see how the Supreme Court's judgment of 16 November 2016 declaring the applicant's application for review inadmissible shows excessive formalism. In the Court's view, in this case, the Supreme Court confined itself to applying domestic law which does not provide for the possibility of requesting the review of a final decision concerning an EAW or extradition. As a superabundant point, in so far as the applicant alleges a flagrant denial of justice in Italy which should have resulted in the refusal by the Portuguese judicial authorities to execute the EAW issued against her, the Court observes that, according to the information from the Italian Central Authority,

	the applicant had received all the notifications relating to her trial and had appointed a lawyer to represent her; she therefore had sufficient knowledge of the proceedings and charges against her. Therefore, it does not appear that the principle of mutual recognition was applied, in the present case, to the detriment of her fundamental rights. *[paras. 80, 81, 83, 84 and 88]*
Savran v. Denmark No.: 57467/15 Type: Judgment [GC] Date: 7 December 2021 Articles: N: 3; Y: 8 Keywords: – expulsion – ill-treatment Links: English, French Translations: Dutch, Russian	*Circumstances:* Expulsion of a Turkish national from Denmark to Turkey following criminal proceedings in which the Danish authorities found that the applicant had commited assault that caused the death of the victim but was exempt from punishment by virtue of insanity caused by the applicant's paranoid schizophrenia. *Relevant complaint:* The applicant suffered from paranoid schizophrenia, a very serious and long-term illness, recognised internationally, including by the World Health Organisation. It had been medically established that this mental illness could be so severe that inadequate treatment could result in a serious, rapid and irreversible decline in patients' health that was associated with intense suffering, or in a significant reduction in life expectancy, and could pose a threat to such patients' own safety and to the safety of others. In its decision of 13 January 2015 the High Court had done no more than rely on the general information obtained from MedCOI on the availability of treatment and medication in Turkey. A wide range of sources had criticised the methods and results of MedCOI's work. In particular, it was unclear how the information had been obtained; moreover, the information provided was always anonymised, which raised doubts as regards the transparency, accuracy and reliability of the relevant sources. More specifically, in the applicant's case that information was clearly insufficient to counterbalance the very serious medical evidence submitted by him. Furthermore, even the general availability of psychiatric treatment in Turkey was open to doubt. The applicant referred to the World Health Organisation Mental Health Atlas of 2017, which indicated that there were 1.64 psychiatrists per 100,000 inhabitants in Turkey, the lowest rate of psychiatrists in relation to the country's population among the countries in the World Health Organisation. Against that background, it was particularly important that the Danish authorities should have examined the question whether the appropriate treatment would actually be accessible to the applicant; however, the High Court had not addressed that issue. Appropriate treatment in his particular case was absent or de facto unavailable to him owing to the lack of essential health services, facilities, resources and/or medicines. He was only able to obtain certain tablets infrequently, as well as the high cost of treatment. It had been of particular importance for individual assurances to be obtained in his case prior to his expulsion. Given that the foreseeable consequences of the lack of appropriate treatment had been clearly described by the psychiatrists in their statements in the domestic proceedings, it had fallen to the Danish authorities to satisfy themselves that the applicant's treatment would not be interrupted. That had not been an insurmountable task for them as Denmark had a large embassy in Turkey and could have made efforts to ensure that the applicant's medical treatment would not be interrupted in the event of his removal. In the absence of such assurances,

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

Links: English only Translations: not available	run concurrently, the domestic law provides separate time-limits for the processing of the asylum application and the delivery of a decision by the relevant authorities. Either way, the decision must be taken "without undue delay", which according to the relevant Supreme Administrative Court's case-law is meant to be, on a case-by-case consideration, in the range of days or weeks, at the very latest sixty days for examination of the asylum application by an administrative body and sixty days for each of the two levels of jurisdiction, if the decision taken as a result of the above examination is brought before the courts. These time-limits have been greatly exceeded in the present case: the administrative decision to dismiss the applicant's asylum application was only issued after eight months – that is to say four times longer than the maximum permissible period stipulated by the domestic law; the periods during which the case was examined at two separate judicial instances exceeded the respective prescribed time-limits as well. Thus, the asylum proceedings took almost seventeen months, instead of six months as provided by the domestic law. The existence or absence of time-limits is one of a number of factors which the Court might take into consideration in its overall assessment of whether domestic law was "sufficiently accessible, precise and foreseeable" (in other words, whether there existed "sufficient procedural safeguards against arbitrariness"). In and of themselves they are neither necessary nor sufficient to ensure compliance with the requirements of Article 5§1(f) of the Convention. However, where fixed time-limits exist, a failure to comply with them may be relevant to the question of "lawfulness", as detention exceeding the period permitted by domestic law is unlikely to be considered to be "in accordance with the law". In the present case, the strict time-limits for examination of the asylum applications constitute an important safeguard against arbitrariness. Therefore, both under the domestic law and the Convention, the domestic authorities were under an obligation to demonstrate the required diligence. However, the domestic authorities neither acknowledged nor reacted to the serious delays in the proceedings, despite the applicant's complaints regarding those delays. As a result of the delays in the asylum proceedings, the length of the detention pending extradition, which lasted eighteen months, was not in accordance with domestic law. In this context, there were two relevant elements: the time limit for the detention pending extradition, and the time-limit for dealing with the asylum claim. They both are inextricably linked – the time-limit for consideration of the asylum claim is intended, in the circumstances of the case, to ensure that the overall length of detention is not excessive. *[paras. 48 through 52]*
Shenturk and Others v. Azerbaijan No.: 41326/17, 8098/18, 8147/18 & 8384/18 Type: Judgment Date: 10 March 2022	*Circumstances:* Expulsion of four Turkish nationals from Azerbaijan to Turkey. All the applicants worked in Azerbaijan in private schools affiliated to the Gülen movement or in various companies affiliated to that movement. All the applicants were detained on the basis of the relevant arrest warrants issued by the Turkish authorities. The first applicant was arrested and detained in Azerbaijan before his deportation to Turkey without any formal decision concerning his deprivation of liberty taken by the Azerbaijani authorities. As to the second applicant, the extradition proceedings were formally instituted against him and his detention pending extradition

Articles: Y: 3, 5§1 Keywords: – expulsion – ill-treatment – relation between extradition and deportation or expulsion Links: English only Translations: not available	for a period of forty days was ordered by a competent court. On 12 July 2018 the Baku Court of Serious Crimes refused his extradition to Turkey and ordered his release from detention, but the second applicant was deported to Turkey immediately after the delivery of that decision in accordance with the Migration Code owing to his residence permit being cancelled by the Azerbaijani authorities. As regards the third and fourth applicants, extradition proceedings were formally instituted against them and their detention pending extradition for a period of forty days was ordered by the competent court. While those proceedings were still pending, instead of being released from detention pursuant to the court decisions taken at the request of the prosecuting authorities, they were handed over to the State Migration Service ("SMS") officers and were immediately taken to the temporary detention facility of the SMS and on the same day were deported to Turkey in accordance with the Migration Code owing to their residence permits being cancelled by the Azerbaijani authorities. The second, third and fourth applicants also applied for asylum in Azerbaijan. As regards the first applicant, an asylum application was lodged on his behalf with the UNHCR Baku Office, the SMS, the OCD and the State Committee for Affairs of Refugees and Internally Displaced Persons, asking them to grant the first applicant refugee status owing to the risk of his being subjected to persecution and ill treatment in Turkey; on the same day the UNHCR Baku Office issued a temporary protection letter with respect to the first applicant, his wife and their four children, valid until 7 September 2017, on the basis that they were registered with the UNHCR and their asylum request was under consideration by the national authorities. *Relevant complaints:* 1. The applicants' detention and deportation to Turkey in circumvention of extradition proceedings had been contrary to domestic law and had amounted to extrajudicial rendition. Their detention had been unlawful and contrary to Article 5§1 of the Convention. 2. The applicants' forcible removal to Turkey was in breach of Article 3 of the Convention, given the real risk of ill-treatment to which they would be subjected there. *Court's conclusions:* 1. The whole period of detention of the first applicant and various periods of detention of the second, third and fourth applicants by the Azerbaijani authorities were not based on a formal decision authorising their detention as required by the domestic law and were accordingly unlawful within the meaning of Article 5§1 of the Convention. The applicants were removed from Azerbaijan to Turkey in circumvention of formal extradition proceedings and of the relevant international safeguards which such proceedings entail. In particular, the first applicant was removed from Azerbaijan in the absence of any formal extradition proceedings and the other applicants could not benefit from the protection afforded by such proceedings. In that connection, the Court cannot overlook the fact that the third and fourth applicants were removed to

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

	Article 3 of the Convention. The Court has no grounds to question the conclusion reached by the Lithuanian authorities that the applicants did not present a credible and consistent account of past threats or persecution. Nonetheless, even when some of an applicant's statements are found not to be credible, that does not necessarily constitute grounds to doubt his or her overall credibility, or to dismiss all of his or her statements. While past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor. The fact that it has not been credibly established that the applicants were ill-treated or threatened in their country of origin in the past is not decisive for the Court when assessing whether there is a real risk of them being subjected to ill-treatment in the event of their removal. According to the most recent reports from various reputable sources, the harassment and persecution of political opponents and their families in Tajikistan remain widespread, and there are no grounds to believe that the situation in the country might be improving. While reputable sources do not explicitly state that any person with any links to the IRPT, however remote, would necessarily be at risk of persecution, they do describe the widespread harassment of political opponents and contain reports of hundreds of members of banned political parties being arbitrarily detained and imprisoned on politically motivated charges, as well as of thousands being included in international search lists. Another source also reported on the arrests of hundreds of opposition supporters. In addition, there are some accounts of politically motivated arrests of both former members of the IRPT and of individuals with only tenuous links to the political opposition, such as individuals who had provided help to families of political prisoners or who had "liked" and shared opposition-related material on social media. In the Court's view, the available information does not lead to an unequivocal conclusion that only leaders and high-ranking members of the IRPT are singled out for persecution by the Tajik authorities, and that so-called "ordinary members" are safe from risk. While the authors of the international reports and other publications may prefer, for various reasons, to draw attention to the fate of particularly prominent individuals, that in itself neither confirms nor denies the existence of any ill treatment of persons falling under other categories. The existence of a practice of ill-treatment of ordinary party members was at the core of the applicants' asylum claims. According to the relevant UNHCR guidelines and under the domestic law, information about the treatment in the country of origin of persons who are in a similar situation to the applicants is one of the factors to be considered when assessing whether an applicant's fear of persecution can be considered well-founded. Taking into account the fact that the available country-of-origin information did not lead to an unequivocal conclusion as to the existence of a practice of ill-treatment of ordinary IRPT members, the Court finds it particularly disconcerting that the domestic authorities failed to assess the information provided by the applicants, and even explicitly told the first applicant to refrain from supplying it. Accordingly, the Court finds that the Lithuanian authorities did not carry out an adequate assessment of the existence in Tajikistan of the practice of ill-treatment of persons who were in a similar situation

	to the applicants. Instead, they focused on the lack of any past threats or persecution directed against the applicants, or the lack of other special distinguishing features, which is not in line with the approach established in the Court's case-law. *[paras. 73, 80 through 83, 85, 88 and 89]*
N.K. v. Russia No.: 45761/18 Type: Judgment Date: 29 March 2022 Articles: Y: 3, 5§4, 34 Keywords: – expulsion – ill-treatment – interim measure Links: English only Translations: not available	*Circumstances:* Expulsion of a Tajik national, charged in absentia with a crime of membership of an extremist organisation by the Tajik authorities, from Russia to Tajikistan, in breach of an interim measure issued by the Court. *Relevant complaint:* The applicant initially complained under Article 3 of the Convention that that the national authorities had failed to consider his claims that he risked ill- treatment in the event of his removal to Tajikistan, and that if removal were to take place it would expose him to that risk. *Court's conclusions:* In so far as the applicant's complaint concerned the risk of ill-treatment that he ran in Tajikistan, the present case is identical to cases in which the Court previously established that individuals whose extradition was sought by Tajik authorities on charges of religiously or politically motivated crimes constituted a vulnerable group facing a real risk of treatment contrary to Article 3 of the Convention in the event of their removal to Tajikistan. Furthermore, given the nature of the charges against the applicant, the manner in which the indictment was issued against him and perfunctory judicial review of his allegations by the domestic courts, the Court finds no reason to depart from its earlier findings in similar cases and concludes that at the time of his alleged removal for Tajikistan a real risk had existed that the applicant would be subjected in Tajikistan to treatment proscribed by Article 3 of the Convention. The Court has already pointed out recurring failures of the Russian Government to comply with an interim measure indicated under Rule 39 of the Rules of Court in cases of applicants whose extradition was sought on extremism or terrorism related crimes in Uzbekistan and Tajikistan and who disappeared or were illegally transferred there. Having regard to the repetitive pattern of disappearances of applicants in similar circumstances and taking into account the applicant's background, the Court is satisfied that the Russian authorities were aware that the applicant could face a forcible transfer to the country where he could be subjected to torture or ill-treatment and that relevant measures of protection should have been taken by them. However, even though the Government claimed that the relevant State bodies were duly alerted by the Ministry of Justice about the application of interim measure by the Court in respect of the applicant, no evidence was submitted by the Government that such notification was in fact taken into account and that the relevant steps were taken in view of the precarious situation of the applicant. Furthermore, where, as in the present case, the authorities of a State party are informed of illegal transfer of a person from Russia, they have an obligation under the Convention to conduct an effective investigation. However, no attempt was made to carry out investigation into the applicant's alleged abduction. The Court is satisfied that the applicant has been subject of an illegal forcible transfer by unidentified persons with the passive or active involvement of State agents. Given the

	circumstances of the present case, the Russian Government had not complied with an indication of an interim measure and nothing had objectively impeded that compliance. *[paras. 5 and 7 trhough 9]*
Khasanov and Rakhmanov v. Russia Nos.: 28492/15 & 49975/15 Type: Judgment [GC] Date: 29 April 2022 Articles: N: 3 Keywords: – extradition (grounds for refusal) – ill-treatment Links: English, French Translations: not available	*Circumstances:* Extradition of ethnic Uzbeks, failed asylum seekers, from Russia to Kyrgyzstan for the purposes of prosecution for aggravated misappropriation of money (first applicant) and certain violent crimes (second applicant). Interim measure complied with. *Relevant complaint:* In the event of their removal to Kyrgyzstan, the applicants would face a real risk of treatment contrary to Article 3 of Convention because they belonged to the Uzbek ethnic minority. The applicants maintained that they had not been prosecuted for acts of a "common criminal nature" and their prosecutions had been ethnically motivated and related to the June 2010 events. Despite the relevant claims having been raised before the Russian authorities, they had been dismissed without sufficient reasons being given. The risk to ethnic Uzbeks prosecuted in Kyrgyzstan had long been recognised by the Court and that irrespective of the nature of the charges, they would be exposed to abuse on the sole basis of ethnicity. *Court's conclusions:* Despite expressing concern about repeated incidents of ill-treatment in Kyrgyzstan, the Court has never found a sufficient basis to conclude that the general situation was such as to preclude all removals to that country. The available international material does not support a finding that the general situation in the country has either deteriorated as compared to the previous assessments, which did not lead the Court to reach findings precluding all removals to Kyrgyzstan, or has reached a level calling for a total ban on extraditions to that country. The Court has concluded in a number of judgments concerning the extradition to Kyrgyzstan of ethnic Uzbeks that they faced a real risk of ill-treatment as a consequence of their ethnic origin. As regards the current situation, the Court notes the absence of specific reporting on ethnicity-based torture of ethnic Uzbeks, as opposed to other ethnicity-based risks, such as insecurity, discrimination with respect to economic and security matters, ethnic profiling and political marginalisation. While in the aftermath of the ethnic clashes of June 2010 there was specific evidence indicating that ethnic Uzbeks were at a heightened risk of ill-treatment, the recent reports no longer contain such indications. Consequently, the Court has no basis for reaching a conclusion that ethnic Uzbeks constitute a group which is still systematically exposed to ill-treatment. As regards the misappropriation charges brought against the first applicant, no solid evidence has been presented in support of the alleged ethnic bias underlying them. The first applicant, for his part, argued that the criminal proceedings had not been initiated against him until 2010 and were in fact a strategy used against ethnic Uzbeks in order to force them to pay bribes and to extort their property. However, those assertions are not supported by any specific and concrete facts, apart from the reference to the time of the opening of the criminal investigation and the inference the Court is being invited to draw therefrom. Given that none of the applicant's own assertions are supported by any evidence and do not reach beyond the level of speculation, no existence of a real individual risk of ill

	treatment can be reliably demonstrated in his case. In respect of the second applicant, the charges against him concern aggravated violent crimes motivated by ethnic hatred in the course of the June 2010 events. However, the mere fact that the applicant has been prosecuted for allegedly ethnically profiling his victims and exerting violence against persons of Kyrgyz ethnicity in the context of inter-ethnic clashes does not automatically mean that he is himself a victim of ethnic persecution or bias. His assertion that the criminal case against him was fabricated or that the accusation of ethnic hatred towards the Kyrgyz part of the population exposed him to prejudice capable of turning into ill-treatment requires separate and proper substantiation. Given that the second applicant has failed to substantiate his allegations beyond ascertaining that he had been charged with hate crimes against ethnic Kyrgyz or to reasonably account for his repeated travel to and from Kyrgyzstan after June 2010 and his obtaining a new passport there several months after arriving in Russia, no existence of a real individual risk of ill-treatment can be reliably demonstrated in his case. As far as individual circumstances are concerned, the burden of proof lies on the applicant to adduce, to the greatest extent practically possible, material and information allowing the authorities of the Contracting State concerned, as well as the Court, to assess the risk his or her removal may entail. The Russian courts had had engaged with their Convention obligations by carefully and appropriately examining the existence of the individual risks capable of preventing the applicants' extradition. Both of the applicants in the present case have failed to demonstrate to the domestic courts, the Chamber or the Grand Chamber the existence of ulterior political or ethnic motives behind their prosecution in Kyrgyzstan or further special distinguishing features which would expose them to a real risk of ill-treatment. *[paras. 120, 126, 129, 132 and 134 through 136]*

Cases proposed for consideration of inclusion when final:

Communicated cases

- Miloš Antić v. Serbia (No. 41655/16) – The application concerns the extradition from Serbia of an individual with dual Canadian and Bosnian nationality to the United States of America, which was carried out in disregard of an interim measure granted by the Court under Rule 39 of the Rules of Court to stay the applicant's extradition.
- K.O. v. Russia (No. 71772/17), I.M. v. Russia (No. 340/18), M.Z. v. Russia (No. 6646/18), K.G. v. Russia (No. 7295/19) – The applications concern (inter alia) the question of a real risk of ill-treatment in case of extradition or explusion to Tajikistan or Uzbekistan.
- Hung Tao Liu v. Poland (No. 37610/18) – The application concerns lawfulness of extradition of a resident of Taiwan from Poland to the People's Republic of China in light of Articles 3 and 6 of the Convention and the length of his detention pending extradition.
- M.S. v. Italy (No. 23845/19) – The application concerns the question of a real risk of ill-treatment in case of expulsion to Kyrgyzstan.

- Muhammed Asif Hafeez v. the United Kingdom (No. 14198/20) – The application concerns the applicant's extradition to the United States of America and the question whether there would be a real risk that he would be subjected to inhuman and degrading punishment through the imposition of an "irreducible" life sentence in the United States of America. Furthermore, having particular regard to the ongoing Covid-19 pandemic, the application also concerns the question whether, if the applicant were to be extradited, there would be a real risk of a breach of Article 3 of the Convention on account of the conditions of detention he would face on arrival.
- Sanchez-Sanchez v. United Kingdom (No. 22854/20) – The application concerns extradition to the USA and the issue of irreducible life sentence.
- A.I. v. Belgium (No. 14588/21) – Extradition to Russian Federation (Chechen, terrorism – Syria; Article 3 and assurances).
- Beverly Ann McCallum v. Italy (No. 20863/21) – Extradition to the USA (murder – State of Michigan; Article 3 – life sentence; compressibility; role of the Governor of Michigan).
- Tom Weickert v. Slovenia (No. 11841/21) – Extradition to the USA (federal charges, maximum penalty 385 years – Article 3, question of disproportionate sentence, life sentence and de facto & de jure reducibility).

Cases not yet final

- Alleleh and Others v. Norway (No. 569/20) – Expulsion order with a two-year re-entry ban against applicant guilty of immigration-law breaches and married to a national of the respondent State with whom she had four children, no insurmountable obstacles to the family moving to mother's country of origin.
- M.N. and Others v. Turkey (No. 40462/16) – Possible deportation to Tajikistan of Tajik nationals of the Islamic faith without serious and proven grounds of a risk of treatment contrary to Art 3 due to their arrest in Turkey in an unregistered Quranic school; no criminal proceedings against the applicants; national courts' acceptance of their status as students of the school and their lack of connection with the Islamic State or an illegal or terrorist organization; no risk of persecution due to any previous political or social activity in Tajikistan
- M.A.M. v. Switzerland (No. 29836/20) – Possible deportation to Pakistan of a Pakistani who converted from Islam to Christianity in Switzerland; request for asylum based on his conversion; absence of an in-depth and rigorous ex nunc assessment by the authorities of the general situation of Christian converts in Pakistan and of the personal situation of the applicant.

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)

Dijkhuizen v. the Netherlands No.: 61591/16	*Circumstances:* The applicant, a Netherlands national held in custody in Peru for the purposes of prosecution there, was not temporarily transferred to the Netherlands in order to be able to be personally present at appeal hearing in the criminal proceedings against him in the Netherlands. The applicant originally refused to be heard

Type: Judgment Date: 8 June 2021 Articles: N: 6 Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (temporary transfer) – mutual assistance (videoconference) Links: English only Translations: Dutch	by videoconference or under letters rogatory. He (partially) changed his mind only four days before the trial hearing, by which time organizing a hearing by videoconference was impossible. *Relevant complaint:* The applicant had been denied a fair hearing by the Court of Appeal inasmuch as he had not been enabled to attend the hearing in person alongside his counsel in order to dispute evidence, present an alternative version of the facts, make requests for further investigations and cross-examine witnesses directly. The applicant's initial refusal to participate in the hearing by videoconference had been inspired by the fear that any statements which he might make and which might incriminate others might come to the notice of the other persons thus incriminated. He had changed his position only after attempts to secure his release from Peruvian detention had failed. At all events, no attempt had ever been made to organise a videoconference. *Court's conclusions:* The Government state that Peruvian law prevented the extradition or temporary surrender to foreign powers of persons who were detained as criminal suspects in Peru itself. They base their statement on information obtained by a liaison officer in Peru from a Peruvian public prosecutor. The applicant relies heavily on the Advocate General's failure to seek a formal decision on extradition or mutual legal assistance but does not attempt to deny that this information is correct. Accordingly, although a formal decision by the competent Peruvian authority would have dispelled all possible doubt, the Court is satisfied that for reasons of Peruvian law it was not possible at the relevant time to obtain the cooperation of the Peruvian authorities with a view to securing the applicant's physical presence, from which it follows that a formal request would have been pointless. Consequently, it cannot be said that the Netherlands authorities did not display due diligence in pursuing the possibilities of international legal assistance. In the circumstances, and also taking into account that the proceedings at issue were part of a substantial and complex criminal trial in which seven suspects were involved who all resided in different countries at that time, the Court of Appeal was entitled to substitute a hearing in which the applicant participated by videoconference – as permitted by domestic law and indeed, in principle, by Article 6 of the Convention – for a hearing at which the applicant could be physically present. The applicant's repeated and unambiguous refusal – which was maintained over a period of eleven months, until the closing address of the appeal hearing – cannot be construed otherwise than as a waiver of the right to take part in the hearing in his own case. Moreover, since the applicant's refusal was twice stated by his counsel in open court, it cannot be found that this waiver was not attended by guarantees commensurate with the importance of the right thus waived. In the circumstances of the present case, therefore, the Court of Appeal was entitled to disregard the request made by the applicant's counsel in his closing speech to prolong the proceedings yet again so that the applicant could participate by videoconference. *[paras. 55, 55, 60 and 61]*
Zoletic and Others v. Azerbaijan	*Circumstances:* The applicants, 33 Bosnia and Herzegovina nationals, were victims of forced or compulsory labour and trafficking in human beings in Azerbaijan.

No.: 20116/12 Type: Judgment Date: 7 October 2021 Articles: Y: 4§2 Keywords: – mutual assistance – obligation to prosecute Links: English only Translations: Macedonian, Serbian	*Relevant complaint:* Azerbaijan had failed to comply with its procedural obligation under the Convention to investigate the applicant's complaints that they had been victims of forced labour and human trafficking, that they had worked without contracts and work permits in Azerbaijan, they had their passports taken away and their freedom of movement restricted by their employer, and that their wages had not been paid starting from May 2009 and until their departure from Azerbaijan. *Court's conclusions:* Like Articles 2 and 3, Article 4 also entails a procedural obligation to investigate where there is a credible suspicion that an individual's rights under that Article have been violated. In addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories. In the context of positive obligations under Article 3 of the Convention, which are similar to those under Article 4 of the Convention, sufficiently detailed information contained in an inter-State legal-assistance request concerning alleged grave criminal offences which may have been committed on the territory of the State receiving the request may amount to an "arguable claim" raised before the authorities of that State, triggering its duty to investigate those allegations further. In so far as the Azerbaijani Anti Trafficking Department knew that many alleged victims had been sent back to Bosnia and Herzegovina and was informed about the criminal proceedings instituted in Bosnia and Herzegovina, it could have sent a formal legal-assistance request to the authorities of that country under the Mutual Assistance Convention, requesting the latter to identify and question such potential victims and to provide copies of their statements to the Azerbaijani law-enforcement authorities. *[paras. 185, 191, 198 and 206]*
Al Alo v. Slovakia No.: 32084/19 Type: Judgment Date: 10 February 2022 Articles: Y: 6§1, 6§3(d) Keywords: – fair trial – mutual assistance (hearing witnesses) – mutual assistance (videoconference) Links: English only	*Circumstances:* Conviction in a criminal proceedings against a Syrian national in Slovakia based on evidence taken in the applicant's absence at the pre-trial stage when he had no legal representation from witnesses who were absent at the trial as they had been expelled from Slovakia. *Relevant complaint:* The applicant had not been provided with legal assistance at the early stages of the proceedings and his conviction had been essentially based on the pre-trial statements of C. and D., whom he had been unable to examine at trial. *Court's conclusions:* The reason why the courts considered the witnesses to be unreachable for the purposes of the applicant's trial was that they were living outside Slovakia, following their expulsion from that country, and that there were no grounds to expect that they would be motivated or allowed to come back to Slovakia to appear at the applicant's trial. The domestic courts reached this conclusion even though, in the course of the proceedings in respect of his appeal, the applicant provided them with addresses for these witnesses and with copies of their identity documents. The courts concluded that his doing so was not sufficient, as it had been his procedural duty

Translations: not available	to show that these witnesses would have been permitted to re-enter Slovakia. The Court notes that there is no indication that such a distribution of the burden of proof with regard to the possibility for a foreign witness to enter Slovakia for the purposes of giving evidence in court had any basis in statute or established practice. Moreover, the Court notes the possibility, to which the Government likewise in no manner responded, of securing the appearance of witnesses at trial via remote means under the Convention on Mutual Assistance in Criminal Matters between the member States of the European Union, which is applicable to all the States involved in the applicant's case. *[paras. 48 through 51]*
Shorazova v. Malta No.: 51853/19 Type: Judgment Date: 3 March 2022 Articles: Y: 1 (Prot. 1); N: 6§1 Keywords: – fair trial – mutual assistance (seizure of assets) Links: English only Translations: not available	*Circumstances:* Seizure of assets belonging to an Austrian national (born in Kazakhstan and widow of the former son-in-law of the former President of Kazakhstan Nazarbayev who, before his departure from Kazakhstan, occupied various high ranking government positions in Kazakhstan) in Malta on the basis of a mutual assistance request by Kazakhstan (under Article 18 of the United Nations Convention Against Transnational Organised Crime) in connection with criminal proceedings ongoing in Kazakhstan against the applicant (and originally also against her husband) for alleged fraud and money laundering. The seizure of assets in Malta lasted from 2014 until 2021. *Relevant complaint:* The Maltese State's compliance with the request for legal assistance and the freezing order requested by the Kazakhstan authorities was not in compliance with the Convention since the requests stemmed from a regime that could not offer any guarantees of a fair trial. The applicant also particularly complained about the freezing order as well as its duration, which was based on politically motivated trumped up charges. *Court's conclusions:* It would appear that the freezing order issued and kept in place for nearly eight years had not been in accordance with the law ab initio since, according to the Criminal Court, the applicant did not have, and never had, the status of a charged or accused person in Kazakhstan, but only that of a suspect. The Court, however, observes that prior to that (besides the original order of the Criminal Court and subsequent renewals) other jurisdictions including the Court of Magistrates and the courts of constitutional competence – had repeatedly considered the applicant as a person charged or accused and confirmed the lawfulness of the measure. Indeed, this appears to have been compounded by the fact that the applicant and her husband requested to be considered as accused. In the absence of all the relevant documentation and detailed submissions on the matter, the Court will not take the place of the domestic courts to establish whether the order had originally been issued subject to the conditions provided for by law, inter alia, that the applicant be a person "charged or accused" in terms of Maltese law. However, the Court finds it disconcerting that in nearly eight years no authority or domestic court had thoroughly examined the matter in legal terms as well as ascertained the applicant's situation in the light of the available information – despite the Government's claim that they were in regular contact with the Kazakh authorities and the repetitive renewals of the order, as well as a constitutional challenge, during which the

	applicant highlighted that the courts had not distinguished between an investigated person and an accused person, which she considered she had become only months after the issuance of the order. The Court would generally respect the State's authorities' judgments as to what is in the general interest unless that judgment is without reasonable foundation. The same applies in the context of seizure of property, including bank accounts in the context of crime investigation. The material provided to the Court and the domestic courts are sufficient to consider that in the specific circumstances of the present case the applicant's deceased husband was an established political adversary to the Kazakh regime and could be the subject of reprisals on their part, including trumped up charges which may extend to the applicant. Certain findings of the Maltese domestic court, albeit at times contradictory, also acknowledge that situation. Thus, while a freezing order may in principle be in the general interest, whether there existed a general interest behind the freezing order which was put, and kept, in place by the Maltese authorities in the specific circumstances of the present case was something which deserved particular evaluation by the domestic courts. It is in such contexts that effective procedural safeguards become indispensable. Domestic courts have an obligation of review where there is a serious and substantiated complaint about a manifest deficiency in the protection of a European Convention right. Under the United Nations Convention Against Transnational Organised Crime mutual legal assistance may be refused, in particular, if the requested State Party considers that execution of the request is likely to prejudice ordre public or if it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted. In the present case, which concerned investigations in a jurisdiction other than that of the domestic courts of the Respondent State, and where there were sufficient grounds to question the genuine nature of the actions undertaken by that jurisdiction, the Maltese courts of constitutional competence proceeded to find that the measure pursued a general interest automatically and without a detailed assessment of the situation pertinent to the case. No other domestic court entered into that matter. In the absence of any such assessment, the Court cannot rubber stamp the domestic courts' findings. In the very specific circumstances of the present case, the Court has serious doubts about the general interest at play being the fight against crime. It is noted that the applicant has not been charged with money laundering in any European country (including Malta), despite investigations in, for example, Austria, Germany and Liechtenstein. The Court also has difficulty accepting that the freezing order was in the general interest because it aimed at securing an eventual confiscation of assets. This is so given that any such confiscation would result from criminal proceedings which, in view of the above materials, may, or are likely to consist of a flagrant denial of justice. Until 2021 – more than seven years after the issuance of the order – no assessment appears to have been made by the Criminal Court as to whether it would have been legitimate and proportionate to apply such a measure, given the circumstances of the case. Thus, at no stage before the Criminal Court had there been any judicial assessment of the credibility of the 'charges'. It would

	appear that, until 2021, the measure was extended automatically, without the applicant being heard. The parties are in disagreement about this factual point – the Government claimed that an oral hearing took place at every renewal and that in general by default the Criminal Court would lift the measure after six months, unless it considered otherwise; the applicant categorically denied that oral hearings took place, noting that she only received notification of the decisions stating that "the Attorney General's request was granted", and that the Criminal Court invariably accepted such extension requests. Given that the Government failed to substantiate this allegation by providing the minutes of such hearings or making any reference to the actual considerations made by the Criminal Court during such renewals, the Court finds it difficult to give credence to the Government's allegation, that any oral hearings took place before the applicant's request in December 2020, and the subsequent developments. *[paras. 107, 109 through 112, 117, 118 and 121]*

Cases proposed for consideration of inclusion when final:

Cases not yet final

- Yeğer v. Turkey (No. 4099/12) – conviction in absentia after not personally being served with documents concerning criminal proceedings, and inability to obtain fresh determination of merits of case; failing to inform authorities of address change and going abroad for extended period of time not amounting to unequivocal waiver of right to appear and defend oneself, or evading justice

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)

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

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