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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

Proposal for an update of the document on Case Law by the European Court of Human Rights of Relevance for the Application of the European Conventions on International Co Operation in Criminal Matters (Document PC-OC(2011)21REV14)

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A. Index of keywords with relevant case law:

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

Shiksaitov v. Slovakia Nos.: 56751/16 & 33762/17 Type: Judgment Date: 10 December 2020 Articles: Y: 5§1, 5§5 Keywords: – asylum – custody (lawfulness) – extradition (custody) Links: English only Translations: not available	*Circumstances:* The case mainly concerns the alleged unlawfulness of the applicant's provisional arrest in Slovakia in 2015 and his subsequent detention with a view to his extradition to Russia, even though he had previously been granted refugee status in Sweden. The applicant was a Russian national of Chechen origin living in Sweden. The applicant's extradition was sought by Russia on account of his criminal prosecution for acts of terrorism that he had allegedly committed in 2004 in Grozny as a member of an armed group and in respect of which, if convicted, he faced a sentence of life in prison. The extradition request was denied by Slovakia in 2016 and the applicant was released. *Relevant complaint:* The applicant complained with regard to his being placed in preliminary detention that Russia had not lodged any request for him to be placed in preliminary detention, as required by Article 16 of the European Convention on Extradition. As regards both his preliminary detention and detention pending extradition, the applicant argued that they had been contrary to both Article 501(b) of the CCP and Article 5§1(f) of the Convention on account of the fact that, as a holder of refugee status in Sweden, he could not be extradited to Russia and there had thus been no reason to secure his presence in Slovakia. He also pointed out that in view of the fact that Directives 2011/95/EU and 2013/32/EU had unified EU asylum policy, it was immaterial whether asylum had been granted to him in Slovakia or in another member State of the EU. Consequently, the Slovak authorities had been bound by the decision of Sweden to grant him asylum. *Court's conclusions:* Article 16 of the European Convention on Extradition establishes that the provisional arrest of a person whose extradition is sought must be decided on by the requested Party in accordance with its own law. Thus, this international instrument requires in the first place compliance with the domestic procedure. In this regard the Court takes cognisance of the interpretation of the applicable rules, as determined by the Slovak Constitutional Court, whereby it unequivocally stated that the only condition for the applicant's placement in preliminary detention was that a request be lodged by the prosecutor, pursuant to Article 504§3 of the CCP; the Constitutional Court furthermore held that Article 16§1 of the European Convention on Extradition could not be interpreted to mean that such a request had to be lodged by the State requesting extradition. As to the applicant's argument that his detention served no purpose as he could not have been extradited owing to the refugee status granted to him in Sweden, the Court notes that it has consistently held that the detention of a person for the purpose of extradition is rendered unlawful and arbitrary by the existence of circumstances that under domestic law exclude the extradition of that person. However, in contrast to the previous cases, it cannot be asserted in the instant case that the applicant's extradition was completely banned, given that the decision of the Swedish authorities to grant him asylum did not automatically exclude the possibility that the applicant might

	be extradited by the Slovak authorities. Article 501(b) of the Slovak CCP prohibits the extradition of a person who has applied for refugee status in Slovakia or who has been granted such status. In the instant case, however, the applicant had been granted refugee status in Sweden – not in Slovakia. Such a decision is extraterritorially binding in that an award of refugee status by Sweden, as one of the State Parties to the 1951 Geneva Convention, could be called into question by Slovakia only in exceptional circumstances giving rise to the appearance that the beneficiary of the decision in question manifestly falls within the terms of the exclusion provision of Article 1F of the 1951 Geneva Convention and therefore does not meet the requirements of the definition of a refugee contained therein. Thus there might be situations where information which came to light in the course of extradition proceedings concerning a recognised refugee may warrant a review of his or her status. Consequently, the fact that the applicant had been granted refugee status in Sweden did not automatically mean that he should be considered as a refugee in Slovakia. Alerted to the applicant's special status and bound by their obligation to respect the principle of *non-refoulement*, the Slovak authorities decided, in the course of standard extradition proceedings, to conduct their own inquiry into the danger of the applicant being persecuted in Russia and to contact the Swedish authorities in order to obtain the full facts of his case. In this context, the Court reiterates that when an extradition request concerns a person facing criminal charges in the requesting State, the requested State is required to act with greater diligence than when an extradition is sought for the purposes of enforcing a sentence, in order to secure the protection of the rights of the person concerned. It was legitimate for the Slovak courts to examine whether an exclusion provision might be applicable in respect of the applicant – all the more so given that it had been established that the Swedish authorities had not checked the Interpol database during the asylum proceedings in respect of the applicant and had not examined the nature of the criminal charge brought against him in Russia. In so doing, the Slovak authorities had to consider all the circumstances of the applicant's individual case. Given that the requesting State was the country in which the applicant had been persecuted (presumably because of his and his brother's political activities), any evidence presented by it had to be treated with great caution when establishing whether or not the extradition request was based on fabricated charges or whether the crime giving rise to that request could be categorised as "non-political" within the meaning of Article 1F of the 1951 Geneva Convention and Article 12§2(b) of Directive 2011/95/EU. Furthermore, since the Slovak authorities initially concluded that the act amounted to a "non-political" offence, they were obliged to examine whether the extradition might be precluded for other reasons, such as non-compliance with formal requirements under extradition law or, as in the instant case, insufficient evidence in support of the allegations made against the applicant. In view of the above, the Slovak authorities cannot be blamed for having carried out a preliminary investigation with a view to determining whether there were any legal or factual impediments to the applicant's extradition and for having examined the extradition request, despite the applicant having been previously granted refugee status in Sweden. Such an examination has to be regarded as being intrinsic to actions "taken with a view to extradition". In this respect, according to the relevant domestic decisions, the applicant's detention was justified (under Articles 505§3 and 506§1 of the CCP)

	by the necessity to secure his presence on Slovak territory (and thus to prevent any obstruction of the completion of the preliminary investigation and of the fulfilment of the purpose of the extradition proceedings). The Court does not ignore that the applicant's extradition to Russia was eventually declared inadmissible, mainly under Article 501(b) of the CCP – that is to say because (i) he enjoyed the protection as a refugee granted to him by Sweden also on Slovak territory and (ii) the exclusion provisions were found to be not applicable to him. It reiterates in this respect that the examination of any risks and objections linked to a person's possible removal from the territory of the State is intrinsic to actions "taken with a view to deportation or extradition". Even if such an examination establishes that such risks and objections are well-founded and capable of preventing the person's removal, such a possible future outcome cannot in itself retroactively affect the lawfulness of detention pending examination of a request for extradition. The salient issue in the present case is thus whether it can be said that action was being taken with a view to the applicant's extradition throughout the whole duration of his detention and, consequently, whether it was justified under Article 5§1(f) of the Convention. The Court emphasises that detention "with a view to extradition" can only be justified as long as the extradition is in progress and there is a true prospect of executing it. As can be seen from the case file, following the hearing of the applicant on 10 March 2015, it took six months (until 9 October 2015) for the prosecutor to ask the Regional Court to allow the applicant's extradition to Russia. More than three further months elapsed before a hearing was held before the Regional Court on 26 January 2016, but it was adjourned with a view to requesting additional information from the Russian authorities; however, no such information was forthcoming. The Government have not submitted any information in respect of any other requests made or avenues explored or any details regarding subsequent steps, save for the fact that on 8 September 2016, a new hearing was held before the Regional Court, at which the applicant's extradition was authorised. While the Supreme Court ruled in its decision of 16 March 2015 that the exclusion provision of Article 12§2(b) of Directive 2011/95/EU was applicable to the applicant (given that he was suspected of having committed a serious non-political crime, which prevented Slovakia from accepting and applying the refugee status conferred on him by Sweden), in its decision of 2 November 2016 another chamber of the same court reached the opposite conclusion – even though no new information had become available in the meantime. More importantly, information about the applicant's refugee status (which constituted the main reason for the decision of 2 November 2016) as well as documents relating to his criminal prosecution in Russia (which allowed for an assessment – for the purposes of the applicability of the relevant exclusion clauses – of the political/non-political nature of his acts) had been available to the Slovak authorities since February 2015. The respondent Government have failed to establish that the authorities proceeded in an active and diligent manner when gathering all necessary information and adjudicating legal challenges raised by the case at hand. Nothing prevented the courts from reaching a final decision on the admissibility of the applicant's extradition much earlier than they in fact did. The grounds for the applicant's detention, therefore, did not remain valid for the whole period concerned (one year, nine months and eighteen days), and the authorities failed to conduct the proceedings with due diligence. *[paras. 62, 64, 68 through 74, 76,*

	80 and through 83]
Turdikhojaev v. Ukraine No.: 72510/12 Type: Judgment Date: 18 March 2021 Articles: Y: 3, 5§1 Keywords: – asylum – custody (lawfulness) – extradition (custody) – extradition (procedure) – ill-treatment Links: English only Translations: Ukrainian	*Circumstances:* Extradition of a national of Uzbekistan. The applicant applied unsuccessfully for asylum in Ukraine and, in the course of the extradition proceedings (after the extradition was granted), was granted refugee status in Sweden. The decision to extradite the applicant was revoked by Ukrainian authorities after they requested and received a copy of the Swedish decision to grant the applicant refugee status in Sweden from the Swedish Embassy in Kyiv. The case concerns the applicant's complaints that his detention in Ukraine, while the authorities examined the question of his extradition to Uzbekistan, was in breach of Article 5 of the Convention, and that the conditions of his detention and his placement in a metal cage during court hearings was in breach of Article 3 of the Convention. *Relevant complaints:* 1. Under Article 3 of the Convention, the applicant complained, inter alia, of his placement in a metal cage during court hearings. 2. The proceedings for the applicant's extradition had not been conducted with the requisite diligence – the Ukrainian authorities had been informed of his refugee status in Sweden, which had constituted a bar to his extradition under domestic law, on 12 April 2013, but he had not been released until 7 June 2013. *Court's conclusions:* 1. Holding a person in a metal cage during a court hearing – having regard to its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – constitutes in itself an affront to human dignity in breach of Article 3 of the Convention. In the present case, the Government did not provide any evidence that there had been an actual and specific security risk in the courtroom which had necessitated the measure. *[paras. 40 and 41]* 2. It is uncontested that the General Prosecutor's Office of Ukraine received a definitive confirmation of the applicant's refugee status in Sweden on 16 May 2013 at the latest. From that date on, the applicant's detention could no longer be justified under Article 5§1(f) 3 of the Convention. However, the applicant was not released until 7 June 2013. *[paras. 50 and 51]*
A.K. and Others v. Russia Nos.: 38042/18, 44546/18 & 20033/19 Type: Judgment Date: 18 May 2021 Articles: Y: 3, 5§1, 5§4 Keywords: – expulsion – ill-treatment Links: English only	*Circumstances:* Expulsion of two nationals of Uzbekistan from Russia to Uzbekistan. The applicants were charged in Uzbekistan with religious extremism. The first applicant, an asylum seeker, was expelled to Uzbekistan when he refused application of an interim measure by the Court. The second applicant, a failed asylum seeker, was released from custody pending expulsion, immediately rearrested and remanded to custody pending extradition but eventually released for expiry of the time limit for the length of custody pending extradition under Russian law. *Relevant complaint:* The applicants complained under Article 3 of the Convention that their expulsion to Uzbekistan would put them at risk of torture and/or inhuman or degrading treatment. The second applicant submitted that in the event of his return to Uzbekistan, he would face a risk of torture because he belonged to a group of people who had been systematically ill-treated in connection with their prosecution for religious and

Translations: not available	political crimes. *Court's conclusions:* The first applicant, who was represented by lawyer, expressed his wish to return to Uzbekistan for personal reasons and despite the risks alleged by him, and requested the Court, of his own free will, to lift an interim measure, following which he was expelled to Uzbekistan. Following his removal to Uzbekistan, neither the applicant, nor his lawyers in any of the submissions claimed that the Russian authorities had actually exposed him to a risk of ill-treatment by removing him to Uzbekistan. In his observations the applicant made a vague reference to ill-treatment allegedly suffered at the hands of the authorities in Uzbekistan but he neither detailed his allegations of ill-treatment nor referred to any impediment to providing further evidence. Nothing indicates that he had been effectively prevented from providing an account of ill-treatment if it had taken place. In these circumstances, the Court cannot but conclude that the applicant's claim of alleged ill-treatment in Uzbekistan is not supported by the material in his case file. It is apparent from the material in the second applicant's case file that in the course of the extradition proceedings he specifically argued that he faced a risk of ill-treatment in Uzbekistan. Furthermore, the applicant argued in his deportation proceedings that he had been prosecuted for religious extremism. Furthermore, in support of his respective application for temporary asylum, the applicant submitted to the migration authorities information about the risks that would face him in the event of his being returned; that application was rejected. Additionally, it can be seen from the search and arrest warrants and extradition request submitted by the Uzbek authorities that the basis of those warrants and request was clear – namely, that the second applicant stood accused of religiously motivated crimes. The Uzbek authorities thus directly associated him with a group whose members have previously been found to be at real risk of being subjected to proscribed treatment. The Russian authorities were therefore presented with evidence capable of proving that the applicant belonged to a vulnerable group of persons who were systematically exposed to ill-treatment in Uzbekistan, in breach of Article 3 of the Convention; the removal of the applicant would therefore expose him to a real risk of such ill-treatment. It is apparent from the material in the applicant's case file that the Russian authorities had at their disposal sufficiently substantiated complaints pointing to a real risk of ill treatment. It is apparent from copies of the respective decision that the migration service, having examined the applicant's application for temporary asylum status, did not carry out a rigorous scrutiny of his arguments. It limited the reasoning of its decision to general statements about the absence of any risks facing the applicant and did not review his arguments in the light of the Court's abundant case law concerning the treatment of persons accused of crimes of extremism in Uzbekistan and the easily accessible international reports on that matter. The migration authorities' review of the applicant's application for temporary asylum and the domestic courts' examination of his claims were perfunctory and did not include a rigorous and independent assessment of whether substantial grounds had been shown for believing that the applicant faced a real risk of treatment violating Article 3 of the Convention. The Court therefore concludes that the domestic authorities did not duly assess the applicant's argument that there was risk of his facing ill-treatment in Uzbekistan. The applicant has been charged with membership of banned religious organisation by the Uzbek authorities. The

	Court has previously established that individuals whose extradition was sought by Uzbek authorities on charges of religiously or politically motivated crimes constituted a vulnerable group that would face a real risk of treatment contrary to Article 3 of the Convention in the event of their removal to Uzbekistan. The present case is similar to those cases, given the nature of the charges against the applicant, the manner in which the indictment against him was issued and the lack of effective judicial review. The Court finds no reason in the present case to depart from its earlier findings on the matter. The Court notes with attention the cautious indications of an improvement in the human rights situation in Uzbekistan included in the independent reports; however, nothing in the parties' submissions in respect of the present case or the relevant material from independent international sources constitutes at this moment a sufficient basis for concluding that persons prosecuted for religiously motivated crimes no longer run a risk of treatment breaching Article 3 of the Convention. *[paras. 35 and 41 through 45]* *[NOTE: The complaint of the third applicant concerned only lawfulness of his detention pending expulsion and is not relevant for extradition. Therefore, it has not been included in this summary.]*
Bivolaru and Moldovan v. France Nos.: 40324/16 & 12623/17 Type: Judgment Date: 25 May 2021 Articles: Y: 3; N: 3 Keywords: – assurances – asylum – extradition (grounds for refusal) – ill-treatment Links: French only Translations: not available	*Circumstances:* Surrender of two Romanian nationals from France to Romania on the basis of a European arrest warrant ("the EAW") for the purposes of enforcement of sentences of imprisonment. The second applicant had been granted asylum in Sweden (and Romanian requests for his extradition were denied by Sweden). *Relevant complaints:* 1. According to the first applicant, the presumption of equivalent protection is inapplicable in the present case for the following reasons. First, under the Framework Decision on the EAW, the French courts were not required to automatically surrender him to the Romanian authorities. This text is binding on States as to the results to be achieved while leaving them room for maneuver as to the form and means to achieve them. In addition, as interpreted by the CJEU, which called into question the principle of automatic surrenders, the Framework Decision leaves a margin of appreciation to the executing judge where there is a risk of violation of the fundamental rights of the person concerned in the event of surrender. Second, the French judge should have referred to the CJEU a preliminary ruling concerning the interpretation of what it meant, in the Aranyosi and Căldăraru judgment, by "a systemic or generalized failure concerning certain detention centers" and by a "serious and proven" reason characterizing the existence of a risk of inhuman and degrading treatment in the event of surrender. In the absence of such a referral, the full potential of the European Union's control mechanism has not been implemented by the national courts. In the absence of application of the presumption of equivalent protection, by granting his surrender to the Romanian authorities, when the information provided by them confirmed the risk that he would be exposed to inhuman or degrading treatment in Gherla prison (by reason of the conditions of detention within this overcrowded establishment, where individual space is insufficient and the most basic hygiene rules not respected), the French judge violated Article 3 of the Convention. 2. The second applicant considers that the presumption of equivalent protection is not applicable to the circumstances of his surrender to the Romanian authorities. In general, the EAW system has given rise to

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

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

	foregoing, the Court considers that the presumption of equivalent protection is applicable to the present case. Consequently, its task is limited to determining whether the protection of the rights guaranteed by the Convention is vitiated in the present case by a manifest insufficiency capable of overturning this presumption, in which case respect for the Convention as a "constitutional instrument of European public order" in the field of human rights would prevail over the interest of international cooperation. The information provided by the issuing State has not been sufficiently put into perspective with the case-law, in particular as regards the situation of the Gherla prison, presented as the one in which the applicant was to be imprisoned. This establishment is experiencing an endemic rate of prison overcrowding and that, in such a situation, the lack of personal space constitutes the central element to be taken into account. However, this aspect of the applicant's future conditions of detention was not seriously taken into consideration, the investigating chamber retaining the prospect of a "minimum space of 2 to 3 m^2" when the Romanian authorities had indicated that the applicant would have a "space between 2 and 3 m^2" in Gherla prison. It was further stated that the area reserved for sanitary facilities was included in the area of this personal space. The conditions of detention at the Rahova penitentiary center presented as the establishment in which the applicant was to be placed in quarantine upon arrival in Romania do not offer the persons detained there a satisfactory personal space. In the Court's case-law, an area of 3 m^2 of floor space per prisoner in a collective cell constitutes the minimum standard applicable with regard to the requirements of Article 3 of the Convention. Although the Romanian authorities did not rule out that the applicant could be detained in a prison establishment other than that of Gherla, the precaution taken in this respect by the executing judicial authority, namely the recommendation that the applicant be detained in an establishment offering identical if not better conditions, is not sufficient to rule out a real risk of inhuman and degrading treatment since, on the one hand, it did not allow for carry out an assessment of such a risk in the case of a given establishment and, on the other hand, that the elements attesting to the existence of the systemic failures of the penitentiary system of the issuing State which it had established that a significant number of prisons did not offer conditions of detention in accordance with the standards. In view of all the foregoing, the executing judicial authority had sufficiently solid factual basis to characterize the existence of a real risk that the applicant would be exposed to inhuman and degrading treatment as a result of his conditions of detention in Romania and could not, therefore, rely exclusively on the statements of the Romanian authorities. *[paras. 97, 98, 100 through 103, 113 through 116, 122, 123, 125 and 126]* 2. The Court of Cassation dismissed the applicant's request that it refer a preliminary question to the CJEU on the consequences to be drawn on the execution of a EAW for the granting of refugee status by a Member State to a national of a third State who subsequently also becomes a Member State. This is a real and serious question as to the protection of fundamental rights by the EU law and its articulation with the protection resulting from the Geneva Convention of 1951 on which the CJEU has never ruled. Because of the choice of the Court of Cassation not to proceed with the referral to the CJEU, it ruled without the relevant

	international mechanism for monitoring respect for fundamental rights, in principle equivalent to that of the Convention. In view of this choice and the importance of the issues in question, the presumption of equivalent protection does not apply. The Framework Decision on the EAW does not provide for a ground for non-execution relating to the refugee status of the person whose surrender is requested. However, the granting of refugee status to the applicant by the Swedish authorities reveals that, at the time when this status was granted, the said authorities considered that there was sufficient evidence to establish that he was in danger of being persecuted in his country of origin. This must be particularly taken into account when examining the reality of the risk that the applicant would suffer treatment contrary to Article 3 of the Convention in the event of surrender. This examination must be carried out in the light of the situation of the person concerned which prevailed on the date of the decision making of the executing judicial authority and taking into account the general economy of the EAW. The executing judicial authority considered that the applicant's refugee status was an element which it had to take into particular account and reconcile with the principle of mutual trust but it did not constitute an outright derogation from this principle justifying in itself the refusal to execute the EAW. Such a position does not in itself conflict with Article 3 of the Convention on condition that the executing judicial authorities assess, at the time of their decision, whether or not the applicant is exposed to a risk of inhuman or degrading treatment if surrendered. The investigating chamber requested information with the Swedish authorities to clarify the applicant's refugee status. In particular, it asked about the consequences of Romania's accession to the EU, a year after the status was granted. It also requested an update of the information concerning the applicant and whether there were any plans to withdraw his status following his arrival in France under a false identity. The Swedish authorities replied that they intended to maintain the applicant's refugee status without, however, commenting on the persistence, ten years after its granting, of the risk of persecution in his country of origin. Nothing in the file investigated by the executing judicial authority or information brought by the applicant before the Court indicates that the applicant was still in danger, in the event of surrender, of being persecuted for religious reasons in Romania. In these particular circumstances, and even if the Swedish authorities did not intend to lift the applicant's refugee status, the executing judicial authority, after a thorough and complete examination of the applicant's personal situation, did not have sufficiently solid factual bases to characterize the existence of a real risk of violation of Article 3 of the Convention and refuse, for this reason, the execution of the EAW. The applicant confined himself, before the domestic courts, to denouncing, in a very general manner, the situation reserved for political opponents in Romania, including in prison, and not the conditions of detention in Romanian prisons, so that the executing judicial authority did not have sufficient information in this regard. Regarding the elements presented to the investigating chamber, he maintained that "torture and inhuman treatment remained commonplace in Romania" and that a CPT report from 2015 mentioned "beatings on prisoners". He also claimed a violation of Article 3 of the Convention resulting from the police operation against certain members of MISA in 2004. In these circumstances, the description made by the applicant before the

	executing judicial authority, in support of his request not to execute the EAW to which he was subject, of the conditions of detention in Romanian penitentiary establishments was neither sufficiently detailed nor sufficiently substantiated to constitute prima facie evidence of a real risk of treatment contrary to Article 3 of the Convention in the event of his surrender to the Romanian authorities. In the circumstances of the case, it was not for the executing judicial authority to request additional information from the Romanian authorities on the future place of detention of the applicant and on the conditions and regime of detention which would be reserved for him in order to identify the existence of a real risk that he would be subjected to inhuman and degrading treatment as a result of his conditions of detention. *[paras. 131, 136 through 138, 141, 143 and 144]*

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.
- Sabrina de Sousa v. Portugal (No. 28/17) – The application concerns the lawfulness of the applicant's detention on the basis of a European arrest warrant issued by Italy for the purposes of her surrender to serve a sentence of imprisonment imposed in absentia.
- K.O. v. Russia (No. 71772/17), I.M. v. Russia (No. 340/18), M.Z. v. Russia (No. 6646/18), S.D. v. Russia (No. 8103/18), Y.M. v. Russia (No. 18359/18), N.K. v. Russia (No. 45761/18), 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 Peoples'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 redcibility).

Cases not yet final
- Sándor Varga and Others v. Hungary (Nos. 39734/15, 35530/16 & 26804/18) – Reducibility of whole life sentence.
- Khachaturov v. Armenia (No. 59687/17) – Decision to extradite applicant unfit for travel, even with medical supervision, due to severe health condition.

Cases referred to the Grand Chamber
- T.K. and S.R. v. Russia (Nos. 28492/15 & 49975/15) – The case concerns the question of a real risk of ill-treatment in case of extradition of ethnic Uzbeks to Kyrgyzstan.
- Savran v. Denmark (No. 57467/15) – The case concerns the lawfulness of expulsion of the applicant to Turkey in light of his state of mental health.

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)

X and Others v. Bulgaria No.: 22457/16 Type: Judgment [GC] Date: 2 February 2021 Articles: Y: 3 (procedural aspect), N: 3 (substantive aspect) Keywords: – ill-treatment – mutual assistance – mutual assistance (hearing witnesses) Links: English, French Translations: not available	*Circumstances:* The five original applicants, a couple and their minor children, all Italian nationals, complained under Articles 3, 6, 8 and 13 of the Convention of the sexual abuse to which the three children had allegedly been subjected while living in an orphanage in Bulgaria, and of the lack of an effective investigation in that regard. *Relevant complaint:* The applicants criticised the manner in which the Bulgarian authorities had carried out the investigation. In the applicants' view, in order for the investigation to be effective, the Bulgarian authorities should (inter alia) have filed a request to interview the applicants, their parents and other potential witnesses in Italy. *Court's conclusions:* The applicants' accounts, as obtained and recorded by the psychologists from the RTC with the help of the applicants' father, and the accounts they subsequently gave to the Italian public prosecutor for minors, which were also recorded on DVD, were deemed credible by the Italian authorities on the basis of the findings made by specialists, contained some precise details, and named individuals as the perpetrators of the alleged abuse. Most of the available documents were transmitted progressively to the Bulgarian authorities in the context of several requests for the opening of criminal proceedings made by the Milan public prosecutor via diplomatic channels and later by the Italian Ministry of Justice and the CAI. If the Bulgarian authorities had doubts as to the credibility of those allegations, in particular on account of certain contradictions observed in the applicants' successive accounts or the possibility that their parents had influenced them, they could have attempted to clarify the facts by filing a request to interview the applicants and their parents. This would have made it possible to assess the credibility of the applicants' allegations and if necessary to obtain further details

	concerning some of them. As professionals who had heard the children's statements, the various psychologists who had spoken with the applicants in Italy would also have been in a position to provide relevant information. It is true that it might not have been advisable for the Bulgarian authorities to interview the applicants given the risk of exacerbating whatever trauma the applicants may have suffered, the risk that the measure would prove unsuccessful in view of the time that had passed since their initial disclosures, and the possibility that their accounts would be tainted by overlapping memories or outside influences. Nevertheless, in these circumstances the Bulgarian authorities should have assessed the need to request such interviews. The decisions given by the prosecuting authorities do not, however, contain any reasoning in this regard and the possibility of questioning the applicants appears not to have been considered, presumably for the sole reason that they were not living in Bulgaria. The Court observes in that regard that Article 38§2 of the Lanzarote Convention provides that victims of alleged abuse may make a complaint before the competent authorities of their State of residence and cannot be required to travel abroad. Article 35 of that Convention, for its part, provides that all interviews with the child should as far as possible be conducted by the same person and that, where possible, audiovisual recordings should be used in evidence. Hence, in the instant case the Bulgarian authorities, guided by the principles set out in the international instruments, could have put measures in place to assist and support the applicants in their dual capacity as victims and witnesses, and could have travelled to Italy in the context of mutual legal assistance or requested the Italian authorities to interview the applicants again. According to the Court's case-law, in transnational cases the procedural obligation to investigate may entail an obligation to seek the cooperation of other States for the purposes of investigation and prosecution. The possibility of recourse to international cooperation for the purposes of investigating child sexual abuse is also expressly provided for by Article 38 of the Lanzarote Convention. In the present case, although the Milan public prosecutor declined jurisdiction on the grounds that there was an insufficient jurisdictional link with Italy in respect of the facts, it would have been possible for the applicants to be interviewed under the judicial cooperation mechanisms existing within the European Union in particular. Even if they had not sought to interview the applicants directly, the Bulgarian authorities could at least have requested from their Italian counterparts the video recordings made during the applicants' conversations with the psychologists from the RTC and their interviews with the public prosecutor for minors. Because of this omission in the investigation, which could very easily have been avoided, the Bulgarian authorities were not in a position to request professionals "trained for this purpose" to view the audiovisual material and assess the credibility of the accounts given. Similarly, as the applicants did not produce medical certificates, the Bulgarian authorities could, again in the context of international judicial cooperation, have requested that they undergo a medical examination which would have enabled certain possibilities to be confirmed or ruled out, in particular the first applicant's allegations of rape. Further, the applicants' accounts and the evidence furnished by their parents also contained information concerning other children who had allegedly been victims of abuse and children alleged to have committed abuse. Even if it was not possible to institute criminal proceedings against children under the age of criminal responsibility, some of the acts described by the

	applicants as having been perpetrated by other children amounted to ill-treatment within the meaning of Article 3 of the Convention and violence within the meaning of Article 19 of the Convention on the Rights of the Child; hence, the authorities were bound by the procedural obligation to shed light on the facts alleged by the applicants. However, despite these reports, the investigations were limited to interviewing and issuing questionnaires to a few children still living in the orphanage, in an environment that was liable to influence their answers. Indeed, the Bulgarian authorities did not attempt to interview all of the children named by the applicants who had left the orphanage in the meantime, whether directly or, if necessary, through recourse to international judicial cooperation mechanisms. All these considerations suggest that the investigating authorities, who did not make use, in particular, of the available investigation and international cooperation mechanisms, did not take all reasonable measures to shed light on the facts of the present case and did not undertake a full and careful analysis of the evidence before them. The omissions observed appear sufficiently serious for it to be considered that the investigation carried out was not effective for the purposes of Article 3 of the Convention, interpreted in the light of the other applicable international instruments and in particular the Lanzarote Convention. *[paras. 215 through 220 and 228]*

Cases proposed for consideration of inclusion when final:

Cases not yet final

- Dijkhuizen v. the Netherlands (No. 61591/16) – The applicant, 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. No violation of Article 6 of the Convention.

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)

Makuchyan and Minasyan v. Azerbaijan and Hungary No.: 17247/13 Type: Judgment Date: 26 May 2020 Articles: Y: 2 (procedural aspect; by Azerbaijan), 14 (; by Azerbaijan); N: 2 (substantive aspect; by	*Circumstances:* Transfer of a sentenced person (R.S.), an Azerbaijani national convicted for murder of an Armenian national (G.M.) and preparation of murder of the first applicant (also an Armenian national) and sentenced to life imprisonment, with a possibility of conditional release after 30 years, from Hungary to Azerbaijan. On R.S.'s arrival to Azerbaijan, he was granted person pardon by the President of Azerbaijan, promoted to the rank of major by the Minister of the Defence during the course of a public ceremony and provided use of a flat belonging to the State housing fund and also awarded eight years (i.e. the time spent serving the sentence of imprisonment in Hungary) of salary arrears. The second applicant was G.M.'s uncle. *Relevant complaints:* 1. In subverting the Hungarian court's judgment and by acting in a way that had been motivated by political grounds entirely extraneous to the criminal justice process, the Azerbaijani Government had obviously failed

Azerbaijan), 2 (procedural aspect; by Hungary) Keywords: – assurances – right to life (procedural aspect) – transfer of sentenced persons (early release) Links: English only Translations: Romanian	to comply with their positive obligations under Article 2 of the Convention. To protect life and prevent impunity for life-endangering offences, in the present case, had required the Azerbaijani authorities to uphold and respect – and to be seen to uphold and respect – the Hungarian courts' conviction of and sentence imposed on R.S. The effect of the exercise of the President's discretion to issue a pardon had therefore been to lessen the consequences of a serious criminal act rather than to show that such acts could in no way be tolerated. Rather than being promoted and receiving other benefits, R.S. should have been dismissed from the military. The "humanitarian reasons" for the pardon given by the Azerbaijani Government had not been substantiated. Accordingly, there had been a "manifest disproportion" between the gravity of the act in question and the punishment that had been implemented, depriving the criminal prosecution of any remedial effect. In pardoning R.S., the Azerbaijani Government had acted in breach of the Transfer Convention. While the Transfer Convention made reference to the possibility of prisoners being pardoned (Article 12), the Convention was explicit that the purpose of transferring prisoners was so that they could then serve in the administering State the sentences imposed on them by the sentencing State. Under the Vienna Convention on the Law of Treaties, any interpretation of the Transfer Convention "in good faith" and "in the light of its object and purpose" could only lead to the conclusion that it had been breached by the actions of the Azerbaijani Government in the case. Those arguments were supported and strengthened by many statements issued by governments and international agencies in response to the transfer of R.S. in August 2012. The applicants also pointed out Azerbaijan's declaration in respect of the Transfer Convention to the effect that any decisions in relation to pardons or amnesties concerning prisoners transferred by Azerbaijan would have to be agreed with the Azerbaijani authorities. To apply such a principle in the present case would have required the Azerbaijani authorities to have obtained the prior agreement of the Hungarian authorities to pardoning R.S., which they had not. 2. Hungary had violated Article 2 of the Convention by granting the request for R.S.'s transfer without obtaining adequate binding assurances to the effect that he would be required to complete his prison sentence in Azerbaijan. The disclosed correspondence between the respondent Governments showed that no such assurances had been sought. Furthermore, a letter from the Azerbaijani Ministry of Justice dated 15 August 2012 to the Hungarian Ministry of Public Administration and Justice appeared to have been written in general terms, setting out applicable domestic law. It did not state, in specific terms, how it was proposed that R.S. would be dealt with following his transfer. The Hungarian authorities had been aware of the highly politically-charged nature of R.S.'s case, not least given R.S.'s admission in the course of the criminal proceedings that his motives had been related to the Nagorno-Karabakh conflict. The Hungarian Government should have been aware that if R.S. were to be transferred to Azerbaijan his sentence would almost certainly be terminated and he would be released, because the Azerbaijani public deemed the case to concern an "honourable murder". The Hungarian authorities knew or ought to have known that the Azerbaijani authorities would release R.S. on his return. The applicants referred to statements made by Hungarian high public

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

	wrong signal to the public if the perpetrator of very serious crimes such as those in the present case were to maintain his or her eligibility for holding public office in the future. As already stated, in the present case not only did R.S. remain eligible for public office, but he was also promoted to a higher military rank in a public ceremony. In view of the foregoing, the acts of Azerbaijan in effect granted R.S. impunity for the crimes committed against his Armenian victims. This is not compatible with Azerbaijan's obligation under Article 2 of the Convention to effectively deter the commission of offences against the lives of individuals. *[paras. 167 through 172]* 2. The Hungarian authorities followed the procedure set out in the Transfer Convention in its entirety. In particular, they requested the Azerbaijani authorities to specify which procedure would be followed in the event of R.S.'s return to his home country. Although the reply of the Azerbaijani authorities was admittedly incomplete and worded in general terms – which in turn could have aroused suspicion as to the manner of the execution of R.S.'s prison sentence and prompted them to further action, as concluded by the Hungarian Commissioner for Fundamental Rights – no tangible evidence has been adduced before the Court by the parties in the present case to show that the Hungarian authorities unequivocally were or should have been aware that R.S. would be released upon his return to Azerbaijan. Indeed, bearing in mind particularly the time already served by R.S. in a Hungarian prison, the Court does not see how the competent Hungarian bodies could have done anything more than respect the procedure and the spirit of the Transfer Convention and proceed on the assumption that another Council of Europe member State would act in good faith. *[para. 196]*

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)
