



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF NAMIK YÜKSEL v. TÜRKİYE

(Application no. 28791/10)

JUDGMENT

Art 8 • Family life • Restrictions imposed on applicant's contact with four-year-old son staying with his wife in the same prison • Domestic authorities, by allowing the applicant to have one hour weekly non-contact visits with son and one hour monthly contact visits with wife and son, had taken all necessary steps that could have been reasonably expected • In particular case-circumstances fair balance struck between competing interests

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 August 2024

FINAL

16/12/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Namık Yüksel v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Davor Derenčinović,

Gediminas Sagatys, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 28791/10) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Namık Yüksel (“the applicant”), on 15 April 2010;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning Articles 8 and 14 of the Convention;

the parties’ observations;

Having deliberated in private on 2 July 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the alleged breach of the applicant’s right to respect for his family life. The applicant, serving a prison sentence at the time of the events, complained that the national authorities had not allowed him to spend sufficient time with his four-year-old son staying with his wife in the same prison. The case raises issues under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1966 and lives in Istanbul. He was represented by Mr E.U. Yıldırım, a lawyer practising in Istanbul.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

5. On 16 August 2006 the Istanbul Assize Court convicted the applicant and his wife of aiding and abetting a terrorist organisation. The Assize court sentenced each of them to three years and nine months’ imprisonment.

6. On 5 January 2009 the applicant’s wife started to serve her prison sentence in Bakırköy Prison. On 2 March 2009 she was transferred to Gebze Prison together with their four-year-old son. At her request, they were placed

in cell no. 5 of Gebze Prison, which could accommodate twelve persons, instead of a cell where those convicted of terrorism-related offences were held.

7. On 5 January 2009 the applicant started to serve his sentence in Metris Prison. On 29 January 2009 he was transferred to Amasya Prison.

8. On an unspecified date, in order to have contact with his wife and son, the applicant applied to the General Directorate of Prisons and Detention Centres of the Ministry of Justice to be transferred to Gebze Prison, where they were staying. The directorate allowed his request and on 2 November 2009 the applicant was transferred to Gebze Prison. He was placed in cell no. B-1, which was designated for those convicted of terrorism-related offences.

9. On 13 November 2009 the applicant filed a petition with the Gebze enforcement judge. In his petition, he noted that he had been transferred, upon his request, to Gebze penitentiary institution where his wife was being accommodated with their son in order to have more frequent meetings with them and that in this institution, he was able to receive non-contact visits from his wife and his son and he would also be able to receive contact visits from them once a month. Nevertheless, he complained that while his child, who was in prison with his mother because he needed care at the time, was allowed to stay with his mother in the women's section of the same prison under the relevant national regulation, there was no provision for the child to spend time with his father. The applicant contended that this legislative approach was sexist and ran counter to the logic and, in his view, failed to take into account the psychological well-being of the child. The applicant further argued that the parents' inability to spend time with their son all together in a common area would have negative consequences for the child. In the light of the foregoing, the applicant requested that the enforcement judge order the prison administration to create an appropriate environment in which he could meet with his child during working hours (during the day) and to organise regular sessions when the child could have contact with both of his parents at the same time.

10. On the same day the administration and observation board of Gebze Prison ("the observation board"), which consisted of the prison governor, deputy governor, psychologist, doctor, teacher and chief officer of the execution guard, examined the applicant's request. In its decision, the observation board took note of Article 70 § 1 of the Regulation on prison management and the execution of sentences and preventive measures, which stated that children under the age of six and in need of care could stay with their mother in prison (see paragraph 17 below). Having regard to that provision, the observation board decided not to allow the child to stay in the cell where his father (the applicant) was staying. However, on humane grounds, it ordered that the father be allowed to have physical contact with his child in the visiting area for one hour during his non-contact visits, which

were to take place every Thursday. Furthermore, the observation board decided that the child and the parents could meet for one hour during monthly visits.

11. Following the observation board's above-mentioned decision, in a decision of 4 December 2009, the Gebze enforcement judge examined the applicant's petition of 13 November 2009 (see paragraph 9 above). The enforcement judge dismissed his request, holding that the observation board's decision had been in compliance with the law.

12. On 16 December 2009 the applicant lodged an objection against the enforcement judge's decision with the Gebze Assize Court. In his objection, the applicant stated that he had not requested that his son stay in his cell or in his care, but merely that he be allowed to meet with his son at certain times of the day during the week in appropriate areas, such as in visiting facilities or recreation rooms of the prison. He submitted that the regulation providing that children should stay with their mother in prison did not explicitly prevent their staying with their fathers. Thus, it was possible to interpret the legislation in his favour and allow him to spend more time with his son. He stated that as a convicted person, he was entitled to spend ten hours a week socialising with other convicted prisoners in an open area of the prison, and as he was not allowed to enjoy that right because of the prison regime which he was subject to, he could spend that time with his child instead. He lastly asked that his request be assessed not only in respect of his situation, but also taking into account the rights of his child.

13. On 21 December 2009 the Gebze Assize Court dismissed the applicant's objection, endorsing the Gebze enforcement judge's decision of 4 December 2009 (see paragraph 11 above).

14. On 26 June 2010 the applicant was released from prison. The applicant's wife continued to serve her sentence until 17 October 2011, when she was released.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

15. Article 41 of the Turkish Constitution, in so far as relevant, provides as follows:

"Family is the foundation of the Turkish society.

...

Every child has the right to protection and care and the right to have and maintain a personal and direct relationship with his or her mother and father, unless it is contrary to his or her best interests."

16. The relevant provisions of Law no. 5275 on the enforcement of sentences and preventive measures, in so far as relevant, read as follows:

Section 65

Accommodation of convicted prisoners' children in need of care

“(1) Children up to six years of age whose mothers are convicted [prisoners] and who have no one outside of prison to look after them may stay with their mothers. Such children shall be accommodated during the daytime at the kindergartens or daycare centres of the penal institution or of the Social Services and Child Protection Institute or of the other organisations and institutions.

(2) Children staying with their mothers shall be given food and drink suitable for their age and condition and according to their needs.

(3) Children over the age of three may be placed in a nursery school or an orphanage, by means of a court decision. Such children must have contact with their mothers from time to time, in accordance with a specific programme and procedure.”

Section 83

“(1) A convicted prisoner may be visited by his or her spouse [and] relatives of up to the third degree ... once a week during working hours for at least half an hour and at most one hour.

...

(3) Visits shall be one of two types, non-contact or contact, with the conditions and duration [of such visits] set out in the regulations issued by the Ministry of Justice.”

17. Article 70 of the Regulations on prison management and the execution of sentences and preventive measures contains the same content as section 65 of Law no. 5275 (see paragraph 16 above).

18. The relevant Articles of the Regulation on visits to prisoners, as in force at the material time and in so far as relevant, read as follows:

Article 5

“1. ...

(d) Prisoners may receive visits from their relatives specified in this Regulation once a week, four times per month; three of these visits shall be non-contact and one of them shall be contact.

...”

Article 7 – Non-contact visits

“1. Non-contact visits [are] meetings which are held in the special section of the prison designated for this [purpose] by the administration of the institution, during which no physical contact is allowed between prisoners and their visitors, and conversations may be monitored so as to be examined by the officer in charge.

...”

Article 9 – Prisoners entitled to receive visitors

“1. Prisoners may be visited by their spouses, mothers, fathers, grandmothers and grandfathers, children, grandchildren, siblings, daughters-in-law, sons-in-law, brothers-in-law ...

...

3. Prisoners held in the same prison may visit each other within the framework of the provisions of this Regulation, on the condition that they are among those listed in the ... paragraph [above].”

II. RELEVANT INTERNATIONAL MATERIAL

A. United Nations documents

19. The relevant provisions of the United Nations Convention on the Rights of the Child, signed in New York on 20 November 1989, read as follows:

“...

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

...

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will ...

...

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests

...

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

...”

20. In its General Comment No. 7 (2005) on implementing child rights in early childhood, the UN Committee on the Rights of the Child wished to encourage recognition by States Parties that young children were holders of all rights enshrined in the Convention on the Rights of the Child and that early

childhood was a critical period for the realisation of these rights. The best interests of the child were examined, in particular, in paragraph 13, which is worded as follows:

“13. Best interests of the child. Article 3 sets out the principle that the best interests of the child are a primary consideration in all actions concerning children. By virtue of their relative immaturity, young children are reliant on responsible authorities to assess and represent their rights and best interests in relation to decisions and actions that affect their well-being, while taking account of their views and evolving capacities. The principle of best interests appears repeatedly within the Convention (including in Articles 9, 18, 20 and 21, which are most relevant to early childhood). The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children’s rights:

(a) Best interests of individual children. All decision-making concerning a child’s care, health, education, etc. must take account of the best interests principle, including decisions by parents, professionals and others responsible for children. States parties are urged to make provisions for young children to be represented independently in all legal proceedings by someone who acts for the child’s interests, and for children to be heard in all cases where they are capable of expressing their opinions or preferences ...”

21. The relevant parts of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) read as follows:

“...

Rule 49

Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

Rule 52

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.

2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.

...”

B. Council of Europe documents

22. Recommendation No. R (98) 7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison (adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers’ Deputies) contains the following provision:

Rule 69

“It should be possible for very young children of detained mothers to stay with them, with a view to allowing their mothers to provide the attention and care they need for maintaining a good state of health and to keep an emotional and psychological link.”

23. Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents, adopted by the Committee of Ministers on 4 April 2018 at the 1312th meeting of the Ministers’ Deputies, provides in so far as relevant:

II. Basic Principles

“1. Children with imprisoned parents shall be treated with respect for their human rights and with due regard for their particular situation and needs. These children shall be provided with the opportunity for their views to be heard, directly or indirectly, in relation to decisions which may affect them. Measures that ensure child protection, including respect for the child’s best interests, family life and privacy shall be integral to this, as shall be the measures which support the role of the imprisoned parent from the start of detention and after release.

2. Where a custodial sentence is being contemplated, the rights and best interests of any affected children should be taken into consideration and alternatives to detention be used as far as possible and appropriate, especially in the case of a parent who is a primary caregiver.

3. Whenever a parent is detained, particular consideration shall be given to allocating them to a facility close to their children.

4. When deciding to transfer sentenced persons to or from a State in which their children reside due regard shall be given to the best interests of the child when considering the rehabilitation purpose of the transfer.

...

IV. Conditions of imprisonment

Allocation, communication, contact and visits

16. Apart from considerations regarding requirements of administration of justice, safety and security, the allocation of an imprisoned parent to a particular prison, shall, where appropriate, and in the best interests of their child, be done such as to facilitate maintaining child-parent contact, relations and visits without undue burden either financially or geographically.

17. Children should normally be allowed to visit an imprisoned parent within a week following the parent’s detention and, on a regular and frequent basis, from then on. Child-friendly visits should be authorised in principle once a week, with shorter, more frequent visits allowed for very young children, as appropriate.

18. Visits shall be organised so as not to interfere with other elements of the child’s life, such as school attendance. If weekly visits are not feasible, proportionately longer, less frequent visits allowing for greater child-parent interaction should be facilitated.

...

20. A designated children’s space shall be provided in prison waiting and visiting rooms (with a bottle warmer, a changing table, toys, books, drawing materials, games, etc.) where children can feel safe, welcome and respected. Prison visits shall provide

an environment conducive to play and interaction with the parent. Consideration should also be given to permitting visits to take place in the vicinity of the detention facility, with a view to promoting, maintaining and developing child-parent relationships in as normal a setting as possible.

21. Measures should be taken to ensure that the visit context is respectful to the child's dignity and right to privacy, including facilitating access and visits for children with special needs.

...

23. Any security checks on children shall be carried out in a child-friendly manner that respects children's dignity and right to privacy, as well as their right to physical and psychological integrity and safety. Any intrusive searches on children, including body cavity searches, shall be prohibited.

...

28. Child-parent activities should include extended prison visits for special occasions (Mother's Day, Father's Day, end of year holidays, etc.) and other visits to further the child-parent relationship, in addition to regular visits. Consideration on such occasions should be given to prison and other staff in visiting areas being dressed less formally, in an effort to normalise the atmosphere.

29. Children shall be offered the opportunity, when feasible and in the child's best interests, and with the support of an appropriate adult, to visit or receive information (including images) about areas in which their imprisoned parent spends time, including the parent's prison cell.

30. Special measures shall be taken to encourage and enable imprisoned parents to maintain regular and meaningful contact and relations with their children, thus safeguarding their development. Restrictions imposed on contact between prisoners and their children shall be implemented only exceptionally, for the shortest period possible, in order to alleviate the negative impact the restriction might have on children and to protect their right to an emotional and continuing bond with their imprisoned parent.

31. A child's right to direct contact shall be respected, even in cases where disciplinary sanctions or measures are taken against the imprisoned parent. In cases where security requirements are so extreme as to necessitate non-contact visits, additional measures shall be taken to ensure that the child-parent bond is supported.

Infants in prison

...

36. Infants may stay in prison with a parent only when it is in the best interests of the infant concerned and in accordance with national law. Relevant decisions to allow infants to stay with their parent in prison shall be made on a case-by-case basis. Infants in prison with a parent shall not be treated as prisoners and shall have the same rights and, as far as possible, the same freedoms and opportunities as all children.

37. Arrangements and facilities for the care of infants who are in prison with a parent, including living and sleeping accommodation, shall be child-friendly and shall:

- ensure that the best interests and safety of infants are a primary consideration, as are their rights, including those regarding development, play, non-discrimination and the right to be heard;

...

- promote attachment between a child and their parent, allowing the child-parent relationship to develop as normally as possible, enabling parents to exercise appropriate parental responsibility for their child and providing maximum opportunities for imprisoned parents to spend time with their children;

- support imprisoned parents living with their infants and facilitate the development of their parental competency, ensuring that they are provided with opportunities to look after their children, cook meals for them, get them ready for nursery school and spend time playing with them, both inside the prison and in open-air areas;

...

- ensure that contact with the parent, siblings and other family members living outside the prison facility is enabled, except if it is not in the infant's best interests.

38. Decisions as to when an infant is to be separated from their imprisoned parent shall be based on individual assessment and the best interests of the child within the scope of the applicable national law.

..."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. Without relying on any Article of the Convention, the applicant, serving a prison sentence at the time of the events, complained that the national authorities had not allowed him to spend sufficient time with his four-year-old son staying with his wife in the same prison.

25. By virtue of the *jura novit curia* principle, the Court is not bound by the legal grounds adduced by the applicant under the Convention and its Protocols, and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). It notes in the present case that the applicant's complaint concerns allegations of a breach of his right to respect for his family life in respect of his contact with his four-year-old son in prison. Accordingly, it considers that the case falls to be examined under Article 8 of the Convention. The relevant provision reads as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. Non-exhaustion of domestic remedies

26. The Government asserted that the applicant had failed to exhaust domestic remedies. In this connection, they submitted that while his complaints before the Court concerned custody of his four-year-old son in prison, he had not submitted a relevant request to the domestic authorities in his petitions, but had merely sought to spend more time with his son. In view of the foregoing, the Government argued that the applicant had not raised his complaints before the national authorities.

27. The applicant contested the Government's submissions under this head. He stated that he had submitted his request to spend more time with his son to the prison administration, and had then raised objections against its decision before the enforcement judge and subsequently the Gebze Assize Court.

28. The Court reiterates that under its well-established case-law, the purpose of the exhaustion rule is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the Convention violation alleged against it. It is true that under the Court's case-law it is not always necessary for the Convention to be explicitly raised in domestic proceedings provided that the complaint is raised "at least in substance". This means that the applicant must raise legal arguments to the same or like effect on the basis of domestic law, in order to give the national courts the opportunity to redress the alleged breach. However, as the Court's case-law bears out, to genuinely afford a Contracting State the opportunity of preventing or redressing the alleged violation requires taking into account not only the facts but also the applicant's legal arguments, for the purposes of determining whether the complaint submitted to the Court had indeed been raised beforehand, in substance, before the domestic authorities (see *Radomilja and Others*, cited above, § 117). Indeed, it would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 75, 25 March 2014). The Court reiterates that it has no power to substitute itself for the applicant and formulate new complaints, and it can base its decision only on the facts complained of (see *Grosam v. the Czech Republic* [GC], no. 19750/13, §§ 90-91, 23 June 2022).

29. Turning to the present case, the Court observes that the applicant's complaint did not concern, in the abstract, the relevant national legislation allowing children to stay with their mothers in prison. However, his complaints did concern the consequences of that regulation in practice in relation to his child. In this context, he did not complain that his child had not

been allowed to stay with him; rather, he complained that the national authorities had failed to take the necessary measures to allow him to spend more time with his son who was staying in his mother's cell in accordance with the regulation in question. In this respect, the Court observes at the outset that in his petitions to the Gebze enforcement judge and the Gebze Assize Court, the applicant asked to be allowed to spend more time with his son, while explicitly stating that he was not seeking to have his son stay in his cell or in his care (see paragraphs 9 and 12 above). In its decision, however, the observation board decided that it was not possible for the child to stay with his father (the applicant) in the men's section of the prison, a decision which was endorsed subsequently by the national courts (see paragraphs 10, 11 and 13 above). In these circumstances, in accordance with the requirements of its case-law, the Court is of the opinion that the applicant did sufficiently explain the factual background giving rise to his complaints.

30. Consequently, the Court considers that the applicant raised his complaints concerning the alleged breach of his right to respect for his family life before the national authorities, thus providing them with an opportunity to consider those matters and to avoid, or provide redress for, the alleged violations, in accordance with the purpose of Article 35 of the Convention (see *Marić v. Croatia*, no. 50132/12, § 53, 12 June 2014).

31. The objection raised by the Government as to non-exhaustion of domestic remedies must therefore be dismissed.

2. *Alleged ill-foundedness of the application and lack of victim status*

32. The Government pointed out that under the principle of subsidiarity, it should be up to the national authorities to ensure respect for the fundamental rights guaranteed by the Convention. Consequently, as a general rule, the establishment of the facts of the case and the interpretation of domestic law should be a matter solely for the national courts and other competent national bodies, the conclusions of which would be binding on the Court. In that connection, the Government emphasised that, as the applicant's complaints had been carefully examined by the national authorities and subsequently the national courts and there was no concrete reason to depart from their conclusions, the applicant's complaint had to be declared inadmissible as manifestly ill-founded.

33. The Government further submitted that since the national authorities had taken the necessary measures to allow the applicant to spend more time with his son in prison, he did not have victim status in respect of his right to respect for his family life under Article 8 of the Convention.

34. The applicant did not submit any comment on those objections by the Government.

35. As to the Government's objection that the complaint was manifestly ill-founded on the basis of the principle of subsidiarity, the Court observes that a similar objection by the Government was examined in *Demirtaş and*

Yüksekdağ Şenoğlu v. Türkiye (nos. 10207/21 and 10209/21, §§ 77-78, 6 June 2023). In that case, the Court held that the application of the principle of subsidiarity had nothing to do with taking away any of its power. The Court further noted that it had both jurisdiction and a duty to examine substantive findings made at national level when applying the principles deriving from the Convention and its case-law. Consequently, the Court held that the principle of subsidiarity could not be used to the detriment of the very spirit of the Convention, and dismissed the objection raised by the Government. The Court sees no reason to depart from those findings in the present case, and it therefore dismisses the Government's objection.

36. With regard to the Government's objection as to the applicant's victim status, the Court considers that this objection is closely linked to the merits of the complaint under Article 8 (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 55, 10 January 2017) and that it is not necessary to examine it for the reasons explained below (see paragraphs 51-63 below; see also, for the same approach, *Giorgioni v. Italy*, no. 43299/12, § 51, 15 September 2016).

37. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

38. The applicant submitted that the national authorities had failed to take the necessary measures to allow him to spend more time with his son staying in his wife's cell.

39. The applicant acknowledged that the prison administration had allowed him to meet with his son during weekly contact visits. However, he submitted that they had been able to make use of this opportunity only once, as the procedures related to those meetings, such as the separation of the child from his mother, the searches and going through iron doors, had caused his child distress. He further noted that as a prisoner, he had already been entitled to monthly contact visits with his family, and thus the decision of the prison administration allowing him to meet with his wife and son during monthly contact visits could not be considered an improvement in that regard.

40. The applicant further stated that the restriction on the time he had been allowed to spend with his son in prison had constituted another punishment for him, and had also prevented the child from developing physically, intellectually and emotionally.

41. Accordingly, the applicant was of the opinion that the national authorities had failed to consider the child's best interests, which had included the child spending more time with his father in prison.

(b) The Government

42. The Government noted that, upon his request, the prison administration had provided the applicant with the opportunity to have face-to-face meetings with his child every week and to meet and spend time with his wife and child during the monthly contact visits. They submitted therefore that there had been no interference with the applicant's right to respect for private and family life.

43. If however the Court would consider otherwise, the Government noted that Article 83 § 1 of the Law no. 5275 and Article 5 § 1 (d), 9 § 1 and 9 § 3 of the Regulation on visits to prisoners constitute the legal basis for the prison administration's decision to allow the applicant to meet his child face-to-face regularly every week during non-contact visits and to see his child during the monthly contact visits. The Government further argued that the interference pursued the legitimate aims of protection of the other's rights, especially the best interests of the child, and maintaining order and discipline in the penitentiary institution.

44. As to the necessity of the interference, the Government noted that the authorities had taken the necessary measures in order to ensure and maintain family unity as well as the applicant's regular contact with his son in the present case. In that connection, they firstly pointed out that at his request, the applicant had been transferred to the prison where his wife and child had been staying. Similarly, at his request, the observation board of that prison, taking into consideration the best interests of the child, had changed the weekly non-contact visits to contact visits, thus allowing him to have his child with him in the visiting area. They observation board had also allowed all three of them to have one contact visit together per month. In other words, whereas the applicant would normally have been entitled to one contact visit per month under the relevant regulation, the decision of the observation board had granted him the right to have contact visits with his son four times per month. In this connection, the prison administration had granted the applicant's requests and met his expectations, taking into consideration the best interests of the child. However, any further extension of the applicant's contact rights with his son would have amounted to favouritism to the detriment of the other inmates, and would have imposed an excessive burden on the prison administration resulting in a negative impact on prison order.

45. Accordingly, the Government asserted that the authorities' decision to allow the child, aged four at the time, to meet with the applicant during weekly contact visits and monthly family visits lasting one hour had not been disproportionate to the legitimate aims pursued and had been justified by relevant and sufficient reasons. Consequently, the Government argued that

there had been no violation of the applicant's right to respect for his family life under Article 8 of the Convention.

2. *The Court's assessment*

(a) **General principles**

46. The relevant general principles have been summarised in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-04, 10 September 2019), *Khoroshenko v. Russia* ([GC], no. 41418/04, §§ 116-26, ECHR 2015 and the cases cited therein), *Deltuva v. Lithuania*, no. 38144/20, §§ 42 and 44, 21 March 2023, and *Subaşı and Others v. Türkiye* (nos. 3468/20 and 18 others, §§ 84 and 88-89, 6 December 2022).

47. In particular, the Court reiterates that detention, like any other measure depriving a person of his or her liberty, entails inherent limitations on his or her private and family life. However, it is an essential part of a prisoner's right to respect for family life that the authorities enable him or her or, if need be, assist him or her in maintaining contact with his or her close family (see *Khoroshenko v. Russia* [GC], cited above, § 106).

48. In so far as the family life of a child is concerned, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance and must come before all other considerations (see, among other authorities, *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX; *Aliyev and Gadzhiyeva v. Russia*, no. 11059/12, § 77, 12 July 2016; *Strand Lobben and Others*, cited above, § 204; and *Abdi Ibrahim v. Norway* [GC], no. 15379/16, § 145, 10 December 2021).

49. Article 8 requires that the domestic authorities strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents (see *Abdi Ibrahim*, cited above, § 145). In the context of its examination of a case, the Court does not propose to substitute its own assessment for that of the domestic courts. Nevertheless, it must satisfy itself that the decision-making process leading to the adoption of the impugned measures by the domestic courts was fair and allowed those concerned to present their case fully, and that the best interests of the child were defended (see *X v. Latvia* [GC], no. 27853/09, § 102, ECHR 2013, with further references).

50. As to the State's positive obligation to take measures, it is an obligation of means, and not one of result. The key consideration is whether those authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case (see *Suur v. Estonia*, no. 41736/18, § 77, 20 October 2020).

(b) Application of those principles in the present case

51. In the present case, the Court notes that the applicant complained that, while he was serving his prison sentence, the national authorities had not allowed him to spend sufficient time with his son staying in his mother's cell in the same prison (see paragraphs 9 and 12 above).

52. The Court considers that the restrictions imposed on the applicant's contacts with his son in prison constituted an interference with his right to respect for his family life under Article 8 of the Convention (see, *mutatis mutandis*, *Deltuva*, cited above, § 38, and *Subaşı and Others*, cited above, § 78, with further references).

53. There was no dispute between the parties that that interference was in accordance with the law, namely Article 83 § 1 of the Law no. 5275 and Article 5 § 1 (d), 9 § 1 and 9 § 3 of the Regulation on visits to prisoners (see paragraphs 16 and 18 above) and that it pursued the legitimate aims of protection of the rights of others and the prevention of disorder (see paragraph 43 above). Accordingly, it remains for the Court to ascertain whether the impugned interference was necessary in a democratic society.

54. In this respect, the Court reiterates that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see *Gnahoré*, cited above, § 59, and *Aliyev and Gadzhiyeva*, cited above, § 77). In cases where the family is in detention, while mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, it cannot be inferred from this that the sole fact that the family unit is maintained necessarily guarantees respect for the right to a family life (see *Popov v. France*, nos. 39472/07 and 39474/07, § 134, 19 January 2012). Furthermore, Article 8 of the Convention requires the States to take into account the interests of the prisoner and his or her family members and to evaluate them not in terms of broad generalities but in relation to the specific situation (*Deltuva*, cited above, § 42).

55. Furthermore, in defining the meaning of terms and notions in the text of the Convention, the Court can and must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values. Any consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases (see, *mutatis mutandis*, *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 85 and 86, ECHR 2008 and *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 101, 14 December 2023). The Court will thus give heed to the evolution of norms and principles in international law through other developments (see, *mutatis mutandis*, *Opuz v. Turkey*, no. 33401/02, § 164, ECHR 2009), such as the relevant international material regarding the importance for children of maintaining a

bond with their incarcerated parents (see paragraph 23 above). However, it observes that the issue of the contact with a child whose both parents are in detention has not been explicitly addressed in the relevant international material, according to which the best interests of the child are to be a primary consideration in all actions concerning them (see paragraphs 19, 20, 21, and 23 above). The right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if that contact is contrary to the child's best interests, is the common principle referred to in that material (see paragraph 19) and international standards providing principled guidance as regards the holding of children in prison with their imprisoned parents (see paragraphs 21 and 23 above).

56. In the present case, the Court will first assess whether the domestic authorities took all necessary steps to facilitate contact between the applicant and his son. The Court will then analyse the decision-making process that led the domestic courts to reach the decision in question and the reasons adduced by those courts (see *Suur*, cited above, § 93).

57. As to the question of whether, in the present case, the national authorities struck a fair balance between the interests at stake (see paragraph 53 above), attaching particular importance to the best interests of the child, the Court takes note of the following points. It observes that, at the time of the events, both the applicant and his wife were serving prison sentences following their conviction to three years and nine months' imprisonment for aiding and abetting a terrorist organisation (see paragraph 5 above). The national authorities, in allowing a request by the applicant's wife in this regard, placed her and their son in a section of the Gebze prison which was designated for prisoners convicted of ordinary offences rather than terrorism-related offences, even though the applicant's wife had also been convicted of a terrorism-related offence (see paragraph 6 above). Furthermore, the Court notes that while he was in the Amasya Prison, the applicant requested to be transferred to the Gebze Prison, where his wife and son were, in order to maintain regular contact with them. The General Directorate of Prisons and Detention Centres of the Ministry of Justice allowed the applicant's request (see paragraphs 7 and 8 above).

58. Moreover, the Court notes that immediately after his transfer to the Gebze Prison, the applicant filed a petition with the national authorities, requesting that they take certain measures to allow him to spend more time with his son, who was staying in that prison with his mother. In that connection, the Court notes that the observation board of the Gebze Prison, having regard to the applicant's request and on the basis of humane grounds, decided that he could have contact visits with his son for one hour once a week in the visiting area. Furthermore, the observation board decided that the child and the parents could meet for one hour during monthly visits (see paragraph 10 above). In that context, although prisoners were entitled to have

contact visits with their family members only once per month pursuant to the relevant Regulations on visiting rights (see paragraph 18 above), the above-mentioned decision of the observation board enabled the applicant to have contact visits with his son four times per month.

59. Regarding the decision-making process, the Court finds it noteworthy that the members of the observation board included the prison's doctor, teacher and psychologist, who were in the best position to assess the best interests of the child, as they were in direct contact with him and familiar with the conditions of the prison in question (see paragraph 10 above). The observation board of the prison administration, considering the relevant legislation and the fact that the child was staying in the women's section of the prison with his mother, took measures to allow the applicant to spend time with his son every week and the whole family to reunite every month in non-contact visits (*ibid.*). Subsequently, the applicant had also the possibility to file objections to the prison administration decision and to present his additional contact requests with his son before the enforcement judge and assize court against, which found appropriate the contact arrangements put in place by the observation board (see paragraphs 11-13 above).

60. On this point, the Court takes note of the applicant's submission that he was able to make use of those extended contact rights only once, as his son was afraid to go through the procedures in order to be transferred from his mother to his father within the prison (see paragraph 39 above). In this regard, it was not in dispute between the parties that the visiting rights of the applicant had been extended and that there had been no restriction put in place in practice by the national authorities as regards the enjoyment of those contact rights. However, even assuming that, as alleged by the applicant, the opportunity could not be used in practice because of the child's emotional response to following the relevant procedures for his transfer within the prison, the Court considers that on a practical basis, there may indeed come a stage where it becomes futile, if not counterproductive and harmful, to attempt to force a child to conform to a situation which, for whatever reasons, he or she resists. Coercive measures against children are not desirable and must be limited in this sensitive area (*Suur*, cited above, § 96). In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (*Luca v. the Republic of Moldova*, no. 55351/17, § 85, 17 October 2023).

61. Accordingly, the Court considers that, in the circumstances of the case at hand, by allowing the applicant to have his son with him in the visiting area for one hour during the non-contact visits once a week and to meet his wife and son for one hour during monthly contact visits, the domestic authorities took all necessary steps that could have been reasonably expected from them (see paragraph 50 above). The Court holds that, having regard to the prison context, the applicant has not demonstrated in which other ways he could

have spent more time with his son during his approximately eight months stay in the same prison.

62. In view of the foregoing, the Court considers that, in the particular circumstances of this case, a fair balance was struck between the competing interests by the national authorities, which took considerable measures in good faith to defend the best interests of the child and to allow the applicant to maintain regular contact with his son.

63. Therefore, the Court thus finds that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 27 August 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President