



## Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 26 judgments on Tuesday 18 December 2018 and 61 judgments and / or decisions on Thursday 20 December 2018.

*Press releases and texts of the judgments and decisions will be available at 10 a.m. (local time) on the Court's Internet site ([www.echr.coe.int](http://www.echr.coe.int))*

### Tuesday 18 December 2018

#### [Arutyunov v. Russia \(application no. 5552/06\)](#)

The applicant, Amayakovich Arutyunov, is a Russian national who was born in 1959 and lives in Chernogolovka (Moscow Region, Russia).

The case concerns the fact that it was impossible for Mr Arutyunov to sell and dispose of his vehicle for several years.

In September 2003 Mr Arutyunov entered into a contract of sale for his vehicle for about 857 euros (EUR). He subsequently asked the car registration authority to cancel the car's registration number, a formality that was essential in order to enable the purchaser to register the vehicle in his own name. His request was refused, on the grounds that the vehicle's engine number appeared on a list of numbers of stolen engines. A preliminary investigation was opened and an expert examination was conducted, which showed that the engine number was genuine and had not been altered. However, the authority refused to remove the registration number of Mr Arutyunov's car from the register.

In December 2005, following several complaints by Mr Arutyunov, the head of the regional department of the Ministry of the Interior authorised, on an exceptional basis, the registration formalities. In June 2006 Mr Arutyunov sold his car for about EUR 176. A note was placed on the margins of the registration certificate, specifying that the engine number had been erroneously entered on the list of stolen engines. Mr Arutyunov subsequently brought an action for damages for the loss he considered that he had sustained as a result of the fact that he had been unable to dispose of his vehicle for several years, but this was dismissed.

Mr Arutyunov relies on Article 1 of Protocol No. 1 (protection of property) to the European Convention of Human Rights.

#### [Khusnutdinov and X v. Russia \(no. 76598/12\)](#)

The case concerns a child residence dispute.

The applicants, Rafael Khusnutdinov and his daughter, X, are Russian nationals who were born in 1978 and in 1998 respectively. Mr Khusnutdinov lives in Washington, while his daughter lives in Moscow.

In June 2008 Mr Khusnutdinov moved from Moscow to the United States with his wife, E., and their daughter. X, started to attend school there.

However, six months later X moved to Tashkent, Uzbekistan, to live temporarily with her grandparents, as her mother had become seriously ill.

E. died of cancer in the United States in December 2008 and Mr Khusnutdinov went to Tashkent for the funeral. He then returned to America, again temporarily leaving X in Tashkent with her grandparents because her state of health prevented her from travelling.

Mr Khusnutdinov returned to Moscow in March 2009, however, the grandparents refused to bring X to her father. During the following months he applied to various Russian consular authorities for assistance with recovering his daughter. In September 2009 the Ministry of International Affairs informed him that officials from the Russian Consulate in Uzbekistan had visited the grandparents and X in their home and found that X's living conditions were excellent and that he was free to take her away with him any time.

The Uzbek childcare authority came to the same conclusion after visiting X.

In January 2010 Mr Khusnutdinov went to Tashkent where he was able to talk to X. In September 2010 he complained to a Russian court that the grandparents were unlawfully retaining his daughter. Different court hearings were held, but in 2011 several were adjourned because he did not appear.

In 2012 the District Court rejected Mr Khusnutdinov's request for X to be returned to him. Taking into account X's wishes and the opinion of the childcare authority, the court found that it would be in her best interests to remain with her grandparents.

Mr Khusnutdinov's appeal against the decision of the District Court was subsequently dismissed, as was his cassation appeal.

Relying on Article 8 (right to respect of private and family life) and Article 13 (right to an effective remedy) of the European Convention, Mr Khusnutdinov complains, on behalf of himself and X, about the domestic court's refusal to order his daughter's return to him from her maternal grandparents and about the lack of an effective remedy to protect their family life.

#### [Resin v. Russia \(no. 9348/14\)](#)

The case concerns a convicted prisoner's complaint about restrictions on family visits.

The applicant, Andrey Resin, is a Russian national who was born in 1974 and is serving a life sentence in the Sverdlovsk Region (Russia).

He served his sentence from 2012 to 2014 in penal colony IK-56 in the Sverdlovsk Region, which is 7,000 kilometres from his home town of Khabarovsk. During his time in this facility he was able to have six short visits from his family, with a glass partition separating them and supervised by a prison officer. He made a request to have visits without such restrictions, but it was rejected.

When transferred to a remand prison in Khabarovsk for two months in 2014 as part of an investigation, he requested to have both short and long visits with his family. The prison governor said it was up to the investigator to decide about the short visits, with the investigator and his supervisor later rejecting his request. The governor rejected his request for a long visit because the applicable law did not allow them for convicted prisoners taken to a remand prison from a correctional facility as part of an investigation.

All of his challenges before the courts were apparently dismissed as unfounded.

Relying on Article 8 (right to respect for private and family life), Mr Resin complains that the restrictions on his family visits in the penal facility and remand prison were excessive. He also alleges under Article 14 (prohibition of discrimination), taken in conjunction with Article 8, that there was a difference in treatment between various groups of prisoners in the remand prison as concerned their right to long-stay visits.

### [Saber and Boughassal v. Spain \(nos. 76550/13 and 45938/14\)](#)

The applicants, Aziz Saber and Hamza Boughassal, were born in 1985 and 1987 in Morocco and are nationals of that country.

The case concerns expulsion orders issued against them following their conviction for criminal offences in Spain.

Azis Saber was given a suspended sentence of one year's imprisonment in June 2008 while Hamza Boughassal was sentenced to three years and one day's imprisonment on an unspecified date, in both instances for drug trafficking. The Directorate General of Police and the Guardia Civil instigated expulsion proceedings on account of the convictions.

On 11 November 2010 and 1 August 2011 the sub-delegations of the central government ordered the applicants' expulsion, combined with a four-year ban on entering the country for Aziz Saber and a ten-year ban for Hamza Boughassal. The applicants challenged the expulsion orders.

On 22 June 2011 the administrative court dismissed Aziz Saber's challenge and upheld the expulsion order. On 9 July 2012 the administrative court granted Hamza Boughassal's challenge in part and reduced the ban on entering the territory to three years. In October 2012 and May 2013 the High Court of Catalonia dismissed an appeal by the applicants.

The court noted that the expulsion orders issued against them in application of section 57(2) of the Aliens' Rights Act did not represent a sanction, but were the legal consequence of the prison sentence imposed by the criminal courts. It also followed that section 57(5) of the same Act was not applicable and that it was not necessary to examine the applicants' ties to Spain.

The High Court added that Aziz Saber's residence permit was not relevant in this situation as the expulsion order automatically led to the cancellation of any leave to remain. Lastly, the court considered that his conviction highlighted the fact that he did not comply with the rules on living together in society and that he could thus not be deemed as having put down roots in Spain.

The applicants each lodged an *amparo* appeal before the Constitutional Court. That court declared the appeals inadmissible on the grounds that the applicants had not complied with the obligation to show that their appeals had special constitutional significance.

Relying on Article 8 (right to respect for private and family life), the applicants allege that their expulsion to Morocco infringed their right to respect for private and family life.

### [Hasan Köse v. Turkey \(no. 15014/11\)](#)

The applicant, Hasan Köse, is a Turkish national who was born in 1972 and lives in İzmir (Turkey).

The case concerns his complaint that a police officer shot and seriously injured him without subsequently being punished.

Mr Köse alleges that he was shot in January 2007 by one of a number of police officers who had stopped him and his brother while they were driving their van to work. According to him, the police officers became agitated when the brothers asked to see the officers' identity papers. They started hitting his brother and sprayed the applicant with tear gas. When the applicant grabbed a wooden stick to defend himself, one of the officers fired three shots at him, hitting him in the abdomen.

Mr Köse was taken to hospital and had surgery. The hospital doctors considered his injury to be life-threatening. In 2008 he was diagnosed with post-traumatic stress disorder and severe depression as a result of being shot, while a 2010 report issued by a hospital in İzmir declared that his ability to work had been reduced by 27%.

In the course of the ensuing investigation and trial, the police officer maintained that he had accidentally shot the applicant during a scuffle.

However, the trial court found the police officer guilty of using excessive force and causing a life-threatening injury. The court sentenced the officer to five months' imprisonment, but suspended pronouncement of the judgment, as permitted under domestic law (namely Article 231 of the Criminal Code of Procedure).

Mr Köse's objection to suspending the conviction was rejected in 2010.

Proceedings against the Ministry of the Interior for compensation are still pending.

Relying in particular on Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment), Mr Köse complains that the police officer who shot and injured him was given a very light sentence, which, in any event, has never been enforced. He emphasises that the officer was not punished despite the fact that he had been found guilty by a criminal court.

**The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.**

These rulings can be consulted from the day of their delivery on the Court's online database [HUDOC](#).

They will not appear in the press release issued on that day.

**Bykova and Others v. Lithuania** (no. 66042/10)

**Černiak v. Lithuania** (no. 37723/11)

**Geglis v. Lithuania** (no. 52815/15)

**Truchanovič and Others v. Lithuania** (nos. 15708/10, 15874/10, 25117/10 and 28380/10)

**Vasilevska and Bartošević v. Lithuania** (nos. 38206/11 and 18054/12)

**Višniakovas v. Lithuania** (no. 25988/16)

**Cernea v. Romania** (no. 7486/12)

**Ursu v. Romania** (no. 44497/09)

**Voinea v. Romania** (no. 64020/09)

**Gorlova v. Russia** (no. 35425/07)

**Kolgin v. Russia** (no. 67907/16)

**Kulbashin v. Russia** (no. 25895/05)

**Shapkin and Others v. Russia** (nos. 34248/05, 46745/06 and 28424/07)

**Abramova v. Ukraine** (no. 41988/08)

**Burgas v. Ukraine** (no. 8976/07)

**Grafov v. Ukraine** (no. 4809/10)

**Kin v. Ukraine** (no. 46990/07)

**Malov v. Ukraine** (no. 55876/08)

**Sergey Smirnov v. Ukraine** (no. 36853/09)

**Sorokin v. Ukraine** (no. 3450/09)

**Tikhak v. Ukraine** (no. 59937/08)

Thursday 20 December 2018

**Cabucak v. Germany** (no. 18706/16)

The applicant, Yunus Cabucak, is a Turkish national who was born in 1980 in Neustadt/Weinstraße and lives in Speyer (Germany).

The case concerns his expulsion to Turkey by the German authorities following several criminal convictions.

In January 1996 Mr Cabucak was issued a permanent residence permit by Germany. From 1996 to 2010, he was convicted on numerous occasions of various drug offences. He was notably sentenced

in 2010 to four years and three months' imprisonment. During this period, he underwent several courses of therapy for his drug addiction.

In July 2002 the competent authority of Neustadt ordered Mr Cabucak's expulsion to Turkey, referring to his prior convictions. His application for administrative review was rejected, as was his appeal to the Neustadt Administrative Court. In January 2005, however, the Rhineland-Palatinate Administrative Court of Appeal reversed the Administrative Court judgment as Mr Cabucak had a right of residence, had not yet undergone therapy, which he was willing to do, and had extenuating circumstances, given that his mother had been murdered by his father in 1982.

In 2008 the authorities once again ordered Mr Cabucak's expulsion to Turkey, which he challenged. In May 2014 the Administrative Court held that the authorities had correctly established that he posed a danger, referring to his frequent failure to undergo therapy for his drug addiction, and the fact that he was likely to commit criminal offences again. Moreover, the court underlined that, even though he had in the meantime had a daughter with a German national, she had only lived with him for a few months after her birth and that contact had become infrequent after the mother had had a second child with a different father. It also considered that Mr Cabucak lacked economic or social integration.

Mr Cabucak's appeal was rejected on 25 March 2015. The Federal Constitutional Court did not accept his constitutional complaint for adjudication.

An attempt to deport the applicant in October 2015 was unsuccessful because he did not possess a valid passport. In December 2015 he was granted a temporary permit to stay pending asylum proceedings. There is no information about the current state of these proceedings.

Relying on Article 8 (right to respect for family and private life), Mr Cabucak complains about the expulsion decision, maintaining that it constitutes an interference with his private and family life.

#### [Merkantil Car Zrt and Others v. Hungary \(nos. 22853/15, 22858/15, 33424/15, 33426/15 and 33737/15\)](#)

The five applicant companies, Merkantil Car Zrt, Merkantil Bank Zrt, OTP Jelzálogbank Zrt, OTP Bank Nyrt, and OTP Ingatlanlízing Zrt, are financial institutions active in the field of consumer loan contracts in Hungary. They are members of the OTP Bank Group.

In Hungary, a number of laws were introduced after the 2008 financial crisis, to help people deal with high levels of domestic consumer debt. In 2014 Parliament passed the Uniformity Act which put into legislation various *Kúria* (Supreme Court) decisions on consumer loan contracts. It also introduced a presumption that standard contractual terms which had not been individually negotiated and which allowed unilateral rises in interest rates, fees and costs were presumed to be unfair unless they complied with seven principles, previously set out by *Kúria*.

Under the Uniformity Act, the unfairness presumption could be rebutted in court and the applicant companies brought claims to do that. They argued at the same time that the Uniformity Act introduced new legal standards retroactively, violating their rights.

The domestic courts found that one or more of the contractual terms did not comply with the seven principles. The courts made reference to a Constitutional Court ruling of November 2014 which approved the new legislation. The Constitutional Court found that the law had made general requirements of fairness and fair dealing that had already existed more specific, and had not amounted to retroactive new rules.

It also upheld procedural restrictions in the law, including short time-limits, and supported the law's aim of streamlining the legal process given the potentially large amount of litigation on disputed loans.

Relying on Article 6 (right to a fair trial), the applicant companies complain that they lacked equality of arms in the proceedings instituted under the Uniformity Act. They also complain that the presumption that certain standard contractual terms were unfair was irrebuttable in practice.

Under Article 1 of Protocol No. 1 to the Convention (protection of property), they complain that the Uniformity Act was applied unlawfully and that there was a disproportionate interference with their rights.

#### **Plotnikov v. Russia (no. 74971/10)**

The applicant, Sergey Plotnikov, is a Russian national who lives in Abakan (Russia).

The case concerns the death of his daughter from a meningitis infection and his complaint of the lack of an effective investigation.

Mr Plotnikov's daughter, V., born in 2005, contracted meningitis and died at the end of May 2008. The applicant and his wife found out that another boy from the same nursery school had been admitted to hospital a few days earlier and had later been diagnosed with the same illness. The boy eventually died in early June 2008.

The authorities began an investigation into the head of the nursery school for aggravated negligence, in particular for failing to alert health professionals and the parents of children attending the nursery school about the infection, and to take measures to close the school.

The investigation, which included expert reports, interviews with the nursery school staff and doctors, lasted a year, but was discontinued in June 2009. The investigator found that the constituent elements of a crime had not been made out in her actions. The applicant challenged that decision in court, but the Abakan Town Court of the Republic of Khakasia and the Supreme Court of the Republic of Khakasia upheld it in 2010.

The applicant complains that the failure of the nursery school's management to close the school immediately after a child had been admitted to hospital had led to his daughter being infected and dying, and that therefore the State had failed to comply with its positive obligation under Article 2 (right to life) of the Convention to preserve her life.

Relying on Article 2 in combination with Article 13 (right to an effective remedy), he complains that the criminal investigation was ineffective and that the decision to close the criminal case against the head of the nursery school was unlawful. He alleges that he had no effective remedies for that issue.

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**Bayramov v. Azerbaijan (no. 58314/09)**

**Mammadov v. Azerbaijan (no. 2099/11)**

**Rahimova v. Azerbaijan (no. 41127/09)**

**Muminović and Others v. Bosnia and Herzegovina (nos. 14738/16, 39857/17, 40158/17 and 52377/17)**

**A.H. and R.B. v. France (no. 34947/18)**

**A.T. v. France (no. 24673/16)**

**Bernézat-Tillet v. France (no. 27058/15)**

**M.M. and Others v. France (no. 24099/18)**

**Kikalishvili v. Georgia (no. 51772/08)**

**Maisuradze v. Georgia (no. 44973/09)**

**Turava and Others v. Georgia (nos. 7607/07 and 8710/07)**

**Herman-Bischoff v. Germany** (no. 28482/13)  
**Domaniczky and Others v. Hungary** (nos. 36125/15, 40497/15, 42518/15, 44721/15, 49120/15, 53267/15, 61113/15, 4589/16 and 13394/16)  
**Erdei and Others v. Hungary** (no. 44364/16, 628/17, 31103/17, 31267/17, 31268/17, 31269/17, 34652/17, 34696/17, 55776/17 and 68972/17)  
**Fülöp and Others v. Hungary** (nos. 29812/16, 35478/16, 37403/16, 63158/16, 64848/16, 66341/16 and 35295/17)  
**Havrilla and Others v. Hungary** (nos. 74802/13, 39515/14, 47400/14, 75592/14, 25706/15, 28695/15, 28856/15, 33752/15 and 34288/15)  
**Herman v. Hungary** (no. 4588/16)  
**Holu and Others v. Hungary** (nos. 39868/15, 44952/15, 51549/15, 52793/15, 14351/16, 19991/16, 28593/16, 33841/16, 44047/16 and 59388/16)  
**J.B. and Others v. Hungary** (nos. 45434/12, 45438/12 and 375/13)  
**Kováts v. Hungary** (no. 46670/15)  
**Kun and Others v. Hungary** (nos. 50153/12, 72159/13, and 44991/15)  
**Lendvay and Others v. Hungary** (nos. 80004/13, 453/14, 29260/14, 60461/14, 406/15, 21845/15, 25142/15, 34373/15, 36921/15 and 37005/15)  
**Magyar v. Hungary** (no. 33262/16)  
**Nagy and Others v. Hungary** (nos. 57849/14, 75054/14, 1547/15, 10383/15 and 17009/15)  
**Németh and Others v. Hungary** (nos. 21869/14, 24706/14, 31627/14, 57475/14, 76561/14, 77693/14, 32205/16, 55534/16 and 3249/17)  
**Szekrényes v. Hungary** (no. 26096/14)  
**Zára and Others v. Hungary** (nos. 17941/14, 18351/16, 20267/16, 60746/16, 65521/16, 700/17, 25970/17, 59443/17, 66131/17 and 71554/17)  
**Alba S.r.l. v. Italy** (no. 50813/11)  
**Benvenuti and Others v. Italy** (no. 46141/06 and 28 other applications)  
**E.P. S.r.l. and Others v. Italy** (nos. 12579/04, 19281/04, 22838/04, 37756/05, 12984/06, 15575/06, 5310/07, 19645/08, 20438/08, 20479/08, 39655/08, 65331/09 and 65343/09)  
**Rubortone and Others v. Italy** (no. 28800/03 and 25 other applications)  
**Santa Cristina S.r.l. v. Italy** (no. 54032/11)  
**Da Silva Vinhas v. Portugal** (no. 64620/14)  
**Dani v. Romania** (no. 5580/16)  
**Dorian Alexandru v. Romania** (no. 21158/15 and 27 other applications)  
**Dumbravă v. Romania** (no. 530/16)  
**Farkas v. Romania** (no. 2706/14)  
**Mureşanu v. Romania** (no. 47352/15)  
**Paleacu and Others v. Romania** (nos. 10815/17, 22903/17, 22908/17, 33139/17, 79826/17 and 7632/18)  
**Asuyev and Others v. Russia** (no. 55318/11)  
**Bodrov v. Russia** (no. 60823/14)  
**Glodev and Others v. Russia** (nos. 77924/11, 56592/12 and 62836/15)  
**Nagayeva v. Russia** (no. 56935/11)  
**Nichkov v. Russia** (no. 58185/14)  
**Rakhmanov and Others v. Russia** (nos. 16608/10, 37356/10, 54869/10, 58843/10, 16090/12, 63876/13 and 20013/17)  
**Sirota v. Russia** (no. 19006/07)  
**Marko v. Slovakia** (no. 11971/18)  
**Sabó and Others v. Slovakia** (nos. 73681/17, 10732/18 and 18250/18)  
**Šitta v. Slovakia** (no. 16570/18)  
**Flego v. Slovenia** (no. 39484/14)  
**Srdić v. Slovenia** (no. 60681/17)

**Ak and Others v. Turkey** (no. 38628/10)  
**Akın v. Turkey** (no. 18085/10)  
**Çaylan v. Turkey** (no. 27994/05)  
**Çiçek and Others v. Turkey** (no. 8801/10)  
**Saydam v. Turkey** (no. 24682/15)  
**Shvets v. Ukraine** (no. 62198/16)  
**Poshteh v. the United Kingdom** (no. 78375/17)

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.