



Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 18 judgments on Tuesday 25 September 2018 and 40 judgments and / or decisions on Thursday 27 September 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)

Tuesday 25 September 2018

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.

Karemani v. Albania (no. 48717/08)
Josić v. Bosnia and Herzegovina (no. 48616/14)
Kaltak v. Bosnia and Herzegovina (no. 14099/15)
Martinović v. Bosnia and Herzegovina (no. 41749/12)
Laniauskas and Januška v. Lithuania (nos. 74111/13 and 53460/15)
Oskirko v. Lithuania (no. 14411/16)
Shenoyev v. Russia (no. 65783/09)
Ćorić v. Serbia (no. 16796/15)
Abdurrahman Tekin v. Turkey (no. 42899/11)
Ayaydın v. Turkey (no. 20509/10)
Düzel v. Turkey (no. 64375/12)
Kınık v. Turkey (no. 39047/11)
Onat v. Turkey (no. 26826/10)
Polat and Tali v. Turkey (no. 5782/10)
Varhan v. Turkey (no. 2433/12)
Yıldırım v. Turkey (no. 74054/11)
Yüksel v. Turkey (no. 30682/11)
Zeliha Eylem Can v. Turkey (no. 2437/08)

Thursday 27 September 2018

[Mendy v. France](#) (no. 71428/12)

The applicant, Florence Mendy, is a French national who was born in 1976 and lives in La-Seyne-sur-Mer (France). She is the sister of L.M., a sports coach who was killed by a police officer.

At around 6 p.m. on 3 May 2007 an employee at a day-care centre informed the police that L.M. was threatening J.-P. H., a sports club member.

Police sergeant L.L. and police officer S.T. went to the scene of the incident. They looked through a small window to see L.M. and J.-P. H. inside a sports hall, with L.M. brandishing a knife. The police officers ordered him to drop the weapon. J.-P. H. left the premises and fled, immediately pursued by

L.M., who ran towards the police sergeant, threatening him with his knife. The police officer sidestepped him and L.M. ran on after J.-P. H. One of the officers fired a warning shot in the air.

Shortly afterwards, police sergeant L.L. came face-to-face with L.M., who tried to stab him, injuring his hand on the second attempt. L.M. fled, was hit by a car, got up again and continued chasing J.-P. H., still armed with his knife.

Police officer S.T. then fired two shots at L.M., missing him, and set off in pursuit. He shot twice and hit L.M., who collapsed. Despite his injury, police sergeant L.L. immediately ran to L.M.'s assistance and alerted the emergency services. L.M. was hospitalised and died the next day.

An investigation was instigated by the regional branch of the National Police Department. The case was dropped.

On 19 May 2007 Ms Mendy lodged a complaint against persons unknown for murder, joining the proceedings as a civil party. On 15 December 2009 the investigating judge issued a discontinuance decision on the grounds that the investigation had not revealed any deliberate intention on the part of the police officer to kill L.M., that the events had unfolded extremely quickly and unforeseeably, and that S.T. had been acting legitimately in attempting to protect the life of J.-P. H., whom L.M. had been directly threatening. Lastly, the judge considered that the use of the firearm had been proportional to the threat posed by L.M. to J.-P. H.'s life. Ms Mendy appealed. By a judgment of 16 February 2010, the Aix-en-Provence Court of Appeal ordered further investigations. By a judgment of 3 May 2011, the Investigation Divisions ruled that there were no grounds for prosecution. It held that the police officer's response had been proportional to the seriousness of the risk to J.-P.H.'s life. It found that all the conditions for the lawful defence of the lives of others had been fulfilled. Ms Mendy lodged an appeal on points of law, which was dismissed.

Relying on Article 2 (right to life) of the European Convention on Human Rights, the applicant submits that the use of such a degree of force was not absolutely necessary, since her brother's behaviour did not constitute a threat justifying the shots fired by the police. She also argues that the investigation fell short of the requisite criteria of independence and effectiveness.

[Saidani v. Germany \(no. 17675/18\)](#)

The applicant, Haykel Ben Khemais Saidani, is a Tunisian national who was born in 1980. The case concerns the applicant's deportation from Germany to Tunisia.

On 1 August 2017 the Ministry of the Interior of the Land of Hessen ordered the applicant's deportation because he was deemed to be a "terrorist threat" (Gefährder"), based on his activities for "Islamic State". A request for interim measures to the Federal Administrative Court by Mr Saidani was rejected in September 2017 on the condition that the Tunisian authorities provided diplomatic assurances. In March 2018 the Federal Administrative Court amended its decision and rejected Mr Saidani's request altogether. It considered that there was a real risk that he would be sentenced to death or given a life sentence in Tunisia. However, in light of the moratorium on capital punishment and the assurances given by the Tunisian authorities, there was no real risk that Mr Saidani would be executed. Should he be sentenced to death, that sentence would *de facto* amount to a life sentence as there was information available that every death penalty was sooner or later commuted to a life sentence by way of a Presidential pardon. Subsequently, a person serving a life sentence could apply for review and parole after 15 years in prison.

In May 2018 the Federal Constitutional Court declined to consider a constitutional complaint by Mr Saidani. It endorsed the finding that the applicant, even if he were sentenced to death, would not have a well-founded fear of that sentence being carried out. In so far as the death penalty constituted *de facto* a life sentence, the Federal Administrative Court had not exceeded its margin of appreciation when it had considered the sentence Mr Saidani could expect in Tunisia to be reducible

and that the applicant had a realistic chance of being released after serving a certain period of time in prison. The Tunisian President had previously pardoned persons convicted of terrorist offences.

On 7 May 2018 the Court rejected a request by Mr Saidani under Rule 39 of the Rules of Court to stay his deportation to Tunisia.

Relying on Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), and Article 1 of Protocol No. 13 (abolition of the death penalty) Mr Saidani complains that he faced the risk of the death penalty in connection with the terrorism charges and that that penalty would neither be commuted to a life sentence nor be reducible. He alleges in particular that there was not a sufficient mechanism in Tunisia to review and possibly reduce a life sentence given to persons originally sentenced to the death penalty.

[Brazzi v. Italy \(no. 57278/11\)](#)

The applicant, Marco Brazzi, is an Italian and German national who was born in 1965. He lives in Munich (Germany) and is entered on the register of Italians living abroad.

The case concerns a search carried out by the Italian tax authorities in a house which Mr. Brazzi has owned in Italy since 2009 and which is inhabited by his wife and children during the school year.

In July 2010 the Mantua prosecutor's office instigated a criminal investigation against Mr Brazzi on suspicions of tax evasion. In August 2010 his house in Italy was searched on the basis of a warrant issued by the prosecutor's office. No documents were seized, however. The case was subsequently discontinued, after Mr Brazzi had clarified his tax situation during the respective proceedings, in particular by proving that Germany was his primary place of residence. The applicant had meantime lodged an appeal with the Court of Cassation complaining of the unlawfulness of the house search, but his appeal was declared inadmissible.

Relying on Article 8 (right to respect for private and family life), Mr Brazzi complains of an infringement of his right to respect for his home. Relying on Article 6 (right to a fair trial) and Article 13 (right to an effective remedy), he complains that he has not had any effective remedy for his complaints under Article 8.

[Öcalan v. Turkey \(no. 12261/10\)](#)

The applicant, Abdullah Öcalan, is a Turkish national who was born in 1949. He is being held in İmralı Prison (Turkey). Before his arrest in 1998 he was the leader of the PKK (the Kurdistan Workers' Party, an illegal organisation).

The case mainly concerns allegations of ill-treatment inflicted on Abdullah Öcalan in 2008 during a search of his cell.

In October 2008 two of Abdullah Öcalan's lawyers and 236 prisoners complained to the Bursa Public Prosecutor's Office that Abdullah Öcalan had been tortured and threatened by the İmralı Prison guards during a search of his cell carried out that same year. For several days dozens of demonstrations and public protests were held in south-eastern and eastern Turkey in support of Abdullah Öcalan. Subsequently, a disciplinary inquiry was launched against a governor and two prison guards, after which the case was dropped. The Mudanya public prosecutor also issued a discontinuance decision as regards the complaint lodged by the applicant's lawyers. The objection lodged by the latter was dismissed by the Yalova Assize Court in July 2009.

Relying on Article 2 (right to life), the applicant complains that he has received threats to his life from the prison staff. Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), he complains that he sustained both physical and verbal ill-treatment during the search. Relying on Article 6 (right to a fair trial) and Article 13 (right to an effective remedy), he complains about the ineffectiveness of the inquiry conducted into the impugned acts. Relying on Article 14

(prohibition of discrimination), he also submits that he has suffered discrimination on the grounds of his ethnic origins.

[Yeşil and Others v. Turkey \(nos. 26608/07 and 328/08\)](#)

The applicants, Mustafa Yeşil, Eşe Teke, Ömer Elmas, Sultan Teke, Ahmet Teke, Hüseyin Teke, and Veli Dayanıklı, are Turkish nationals who were born in 1955, 1944, 1936, 1937, 1945, 1950 and 1964 respectively and live in Adana (Turkey). The applicants owned land in the Pozantı region, at *Tekir Yaylası*, which is one of the vast Turkish plateaux well known as tourist attractions and which is listed as a Mediterranean mountain pasture area. The case concerns proceedings to annul their ownership rights.

In January 1999, after the establishment of the cadastre, the title deeds of all the applicants, apart from that of Mr Dayanıklı, who had purchased his land on the basis of the land register, were registered in the cadastre on the basis of adverse possession. The applicants had built holiday homes with municipal authorisation and had paid the relevant property taxes.

On different dates the Treasury initiated proceedings to annul the applicants' title deeds under the Law on pasture areas. After those proceedings the Regional Court ordered the registration of the plots of land in the special land register for pasturage areas, in the name of the Treasury. The judgments were upheld by the Court of Cassation. The applicants lodged requests for rectification of the Court of Cassation's judgment, some of which were dismissed without examination of the merits on the grounds that the land in question was worth less than the legal threshold value for an action to rectify a judgment, and others were dismissed upon consideration of the merits.

Therefore, in order to be eligible for Law No. 5685, the applicants submitted applications to buy back the pasturage areas whose title deeds had been annulled, at a price set by the authorities. Between October 2010 and October 2011 they obtained their title deeds for amounts ranging from 2,649 euros (EUR) to 16,186 EUR, depending on the plot.

Relying, in particular, on Article 1 of Protocol No. 1 (protection of property), the applicants submit that the loss of their ownership rights without compensation infringed their right to respect for their property. They argue that Law No. 5685 requiring them to buy back their own plots of land demonstrates the unlawfulness and injustice of the proceedings designed to annul their title deeds. In fact, they had to purchase back their own property.

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L.G. and Others v. Hungary (no. 20424/10)

Kvasņevskis and Others v. Latvia (no. 50853/06)

Kazėnas v. Lithuania (no. 55681/15)

Pīnzari v. the Republic of Moldova (no. 46663/14)

Romagnoli v. Montenegro (no. 11200/15)

Barry v. the Netherlands (no. 66238/16)

Kake and Camara v. the Netherlands (no. 63913/17)

Alves Fernandes v. Portugal (no. 33553/12)

Costa Marinho and Lemos Alves Mota v. Portugal (no. 33557/12)

Cristian v. Romania (no. 39663/15)

Matieş and Mătieş v. Romania (no. 6943/16)

Nicolescu v. Romania (no. 39498/13)

Popescu and Canacheu v. Romania (nos. 30363/15 and 30405/15)

Tănăsescu and Others v. Romania (nos. 30469/15, 30473/15, and 30479/15)
Tcaciuc and Others v. Romania (nos. 43695/05, 10681/07, 26496/07, 13599/08, 13987/08, and 17328/09)
Fedorov v. Russia (no. 52226/14)
Fesenko and Others v. Russia (nos. 15235/07, 37871/07, 19500/08, 20527/08, 44275/08, 3953/09, 33056/09, and 75416/11)
Khalilov v. Russia (no. 60067/12)
Kolisnik v. Russia (no. 28731/09)
Lyubomudrova and Voronina v. Russia (no. 50766/14)
Makazhi v. Russia (no. 39109/07)
Balaša v. Serbia (no. 21317/16)
Petek v. Slovenia (no. 36035/16)
Çiftçi v. Turkey (no. 22537/12)
Deniz and Others v. Turkey (nos. 57291/12, 43115/13, and 43148/13)
Erbaş v. Turkey (no. 59845/10)
Kurşun v. Turkey (no. 10439/12)
Mutlu v. Turkey (no. 24339/12)
Özdemir v. Turkey (no. 4820/08)
Tizci v. Turkey (no. 36218/11)
Tuğluk and Others v. Turkey (nos. 30687/05 and 45630/05)
Uça v. Turkey (no. 73489/12)
Yayla v. Turkey (no. 55643/12)
Kutsak v. Ukraine (no. 10528/10)
Pokhodenko v. Ukraine (no. 19964/13)

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

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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.