



Judgments of 24 November 2020

The European Court of Human Rights has today notified in writing 11 judgments¹:

four Chamber judgments are summarised below;

separate press releases have been issued for two other Chamber judgments in the cases of : *Bardali v. Switzerland* (application no. 31623/17) and *Şik v. Turkey* (no.36493/17);

five Committee judgments, concerning issues which have already been submitted to the Court, can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments in French are indicated with an asterisk ()*.

Bahaettin Uzan v. Turkey (application no. 30836/07)

The applicant, Bahaettin Uzan, is a Turkish national who was born in 1942 and lives in Istanbul (Turkey). His family, in particular his brother, ran one of the biggest conglomerates in Turkey, operating in a variety of sectors, ranging from banking and finance to media and telecommunications (“the Uzan Group”).

The case concerned the applicant’s complaint with regard to criminal proceedings brought against him in what the Turkish courts had referred to as “the biggest banking corruption incident in the country’s history”. In particular, an Uzan Group information-technology company, Merkez Yatırım A.Ş. (“Merkez Yatırım”), had been accused of developing a software programme that had been used to divert tremendous amounts of money from a bank belonging to the group, Türkiye İmar Bankası T.A.Ş. (“İmarbank”).

Following an audit by the banking regulation authorities, criminal proceedings were brought against 25 people – board members and senior managers of İmarbank and Merkez Yatırım, including the applicant and his brother – in connection with alleged bank fraud. The applicant, who was vice—chairman of Merkez Yatırım, was arrested and placed in pre-trial detention in September 2003.

In December 2003 the Istanbul public prosecutor filed a bill of indictment in respect of the suspects with the Istanbul 5th Assize Court. Following amendments to the relevant legislation, the applicant’s case was transferred to the Istanbul 8th Assize Court, a specialised assize court designated to deal with certain banking offences.

The defendants challenged the constitutionality of the Istanbul 8th Assize Court. However, in April 2004 the 8th Assize Court rejected their plea for referral to the Constitutional Court, ruling that such specialised courts were required to deal with a new generation of complex economic crimes. Moreover, the 8th Assize Court had been established by the High Council of Judges and Prosecutors and functioned no differently to the ordinary assize courts.

In February 2006 the Istanbul 8th Assize Court convicted the applicant of membership of a criminal organisation and of knowingly participating in the offence of aggravated embezzlement. He was

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment’s delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

sentenced to a fine equivalent to approximately 12,314,900,000 euros at the relevant time and to over 17 years' imprisonment. The court, referring to a number of audit and on-site inspection reports, found that the crimes had been facilitated by the software programme developed for İmarbank by Merkez Yatırım. It also notably took into account the fact that the criminal enterprise had been headed by the applicant's brother, with whom the applicant had admitted to having very close ties, including working relations, over many years, as well as his duties in the Uzan Group companies.

Throughout the first-instance and appellate proceedings, the applicant denied the charges against him. He argued that his participation in the Uzan Group companies, including Merkez Yatırım, had been only symbolic, and that he had no knowledge or experience of banking or IT operations. He also stressed that the Istanbul 8th Assize Court had been established by the High Council of Judges and Prosecutors following a proposal of the Minister of Justice, who was a member of the ruling party and a political rival of the Uzan family.

His appeal against the judgment of 2006 was however rejected by the Court of Cassation in 2007.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, the applicant complained of a breach of his right to an independent and impartial tribunal established by law, mainly on account of the transfer of his case from the Istanbul 5th Assize Court to the Istanbul 8th Assize Court. He argued in particular that the Istanbul 8th Assize Court that convicted him had been an extraordinary tribunal that had infringed the principle of trial before "a rightful judicial authority" and that the President of the Istanbul 8th Assize Court had been biased.

No violation of Article 6 § 1 with regard to the right to a tribunal established by law

No violation of Article 6 § 1 with regard to the right to an independent and impartial tribunal

Kurban v. Turkey (no. 75414/10)

The applicant, Dursun Ali Kurban, is a Turkish national who was born in 1947 and lives in Trabzon (Turkey).

The case concerned the annulment of a public procurement contract and the refusal to return the applicant's guarantee as a consequence of the authorities' subsequent discovery of the fact that the applicant had been indicted for a procurement-related offence at the time of his participation in the tender.

In 2006 the applicant was questioned and later indicted in connection with manipulating public procurement contracts. He claims he was not informed of the indictment. The criminal proceedings were still pending when the applicant made submissions to the European Court.

Later in 2006 the applicant and his partner successfully tendered to carry out a construction project for the State agency responsible for hydropower. They deposited a guarantee amounting to 6% of the contract's value.

In 2007 the Trabzon Governor's Office informed the hydropower agency that people who were being prosecuted for offences related to public procurement could not be involved in public tenders. When the agency found out about the applicant's prosecution, it cancelled the contract, refusing to return the deposit, in accordance with the relevant provisions of the Public Procurement Act and the Public Procurement Contracts Act. The applicant challenged that decision in the courts. He argued that he would not have tendered had he been aware of the impending prosecution. The Trabzon Commercial Court stated that as a person with experience of public contracts, he should have taken the possibility of a case being brought against him into account before tendering. It found against him. That decision was upheld on appeal.

The relevant provisions of the Public Procurement Act and the Public Procurement Contracts Act were found to be in accordance with the Constitution by the Constitutional Court on 14 January 2010.

Relying on Article 6 § 2 (presumption of innocence) of the European Convention and on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant complained that the annulment of the contract and retention of his guarantee had been unlawful and had infringed his rights.

No violation of Article 6 § 2

Violation of Article 1 of Protocol No. 1

Just satisfaction: the Court decided to strike out of its list of cases the part of the application concerning pecuniary and non-pecuniary damage.

Muharrem Güneş and Others v. Turkey (no. 23060/08)*

The case concerned the dismissal of title claims submitted by the applicants regarding several plots of land registered as Treasury property and the failure to take account of the ownership title awarded to Adem Güneş by judicial decision of 1951.

The applicants are nine Turkish nationals who were born between 1943 and 1970. They live in Diyarbakır (Turkey). They are heirs to Adem Güneş.

In 1951 Adem Güneş had brought before the Eğin Regional Court an action for title over a property based on adverse possession. In the same year the regional court allowed his request, noting that for over 20 years he had retained uninterrupted peaceful possession of the land in question, which was an “oak field”. He had been granted title over the land entered in the Land Registry. Later the land had been voluntarily split up into several plots within allotment no. 119.

In 1997, following amendments to the land register, plots nos. 7, 9, 26, 27 and 40 in allotment no. 119 were registered as Treasury property. According to the conclusions of the cadastral commission, no ownership title in respect of the plots of land had been found during the examination of the land register, and those plots could not have been acquired by adverse possession inasmuch as they were on rocky land unsuitable for farming. Furthermore, plot 8, which was untilled land, was registered as Treasury property.

In 2003 the applicants brought an initial action seeking the annulment of the registration of plots nos. 26, 27 and 40 as Treasury property and their re-registration in their names. They submitted, among other things, that their ownership title had been entered in the Registry. In 2006 the regional court dismissed their action, noting in particular that some of the plots were now under water in a dam and could not be privately owned. The court also pointed out that the plots of land unusable for farming purposes could not have been acquired by adverse possession, noting that the section of plot no. 27 which was not under water was unsuitable for farming. The applicants’ appeal on points of law was dismissed in 2007.

In 2007 the applicants brought another action before the regional court seeking the registration of plots nos. 7, 8 and 9 in their names on the land register. They argued that contrary to the findings of the cadastral commission, their ownership title had been entered in the register by judicial decision of 1951. They also explained that they had continued to cultivate and own the plots of land after the death of Adem Güneş in 2003. In the same year the regional court dismissed their action, pointing out that the whole of plot no. 7 and two sections of plot no. 8 were under water, having been flooded by a dam. It also held that plot no. 9 and the rest of plot no. 8 should be considered as woodland, which could not be privately owned. In 2008 the Court of Cassation dismissed the applicants’ appeal on points of law on the grounds that the 1951 judicial decision could not be invoked against the Treasury given that the latter had not been party to the proceedings.

Relying, in particular, on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicants complained of an infringement of the right to the peaceful enjoyment of their property.

Violation of Article 1 of Protocol No. 1

Just satisfaction: the Court decided to strike out of its list of cases the part of the application concerning pecuniary and non-pecuniary damage. It awarded 1,720 euros (EUR) for costs and expenses.

Unuane v. the United Kingdom (no. 80343/17)

The applicant, Charles Unuane, is a Nigerian national who was born in 1963.

The case concerned the applicant's deportation to Nigeria, following a criminal conviction, forcing him to leave his partner and three children in the United Kingdom.

The applicant came to the UK as a visitor in 1998 and was granted a right of residence the following year. In December 2000, the applicant's Nigerian partner entered the UK, and their three children were born thereafter.

In 2009 he and his partner were convicted of offences relating to the falsification of some 30 applications for leave to remain in the UK. He was ultimately sentenced to a period of five years and six months' imprisonment, while his partner was sentenced to 18 months' imprisonment.

In 2014 the Secretary of State for the Home Department issued a deportation order against the applicant, his partner, and two of their children, who at the time were not British citizens, as dependent family members of the applicant's partner. The Secretary of State considered that the applicant and his partner were foreign criminals and their deportation was for the public good.

The applicant appealed against the Secretary of State's decision on the grounds that he had an established family life and private life in the UK and his deportation to Nigeria would be in breach of the European Convention on Human Rights. The applicant's partner and the two children also appealed.

Ultimately, in 2016, the domestic courts allowed the appeals of the applicant's partner and children, concluding that separating them would be "unduly harsh" on the children. The courts further acknowledged an acute need for parental support in the case of the eldest of the children who had a heart defect and was to have forthcoming surgery in the UK which was not available in Nigeria.

The applicant's appeal was, on the other hand, dismissed because he could not identify, as required by the Immigration Rules, "very compelling circumstances" against his deportation, over and above the parental relationship with his children.

The applicant was deported in February 2018.

Relying in particular on Article 8 (right to respect for private and family life) of the Convention, the applicant complained that his deportation to Nigeria had disproportionately interfered with his family and private life.

Violation of Article 8

Just satisfaction: EUR 5,000 (non-pecuniary damage)

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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.