



The uploading of prisoners' correspondence to a judicial IT server was in breach of the Convention

The case mainly concerned the uploading of the applicants' correspondence, while they were in detention, onto the National Judicial Network Server (*Ulusal Yargı Ağı Bilişim Sistemi* – "UYAP").

In today's **Chamber** judgment¹ in the case of [Nuh Uzun and Others v. Turkey](#) (application no. 49341/18 and 13 other applications) the European Court of Human Rights held:

- unanimously, that there had been a **violation of Article 8 (right to respect for private and family life/right to respect for correspondence)** of the European Convention on Human Rights;
- by a majority (6 votes to 1), that **the finding of a violation constituted in itself sufficient just satisfaction in respect of the non-pecuniary damage** sustained by the applicants.

The Court found that the uploading of the correspondence of remand and convicted prisoners onto the UYAP server stemmed directly and specifically from an instruction issued by the Ministry of Justice on 10 October 2016 and reissued on 1 March 2017. It noted that the instruction had been addressed to the public prosecutors and prison authorities. The documents in question were therefore unpublished internal documents which as a matter of principle did not have binding force. In the Court's view, texts of this kind, which were not issued under any rule-making powers, could not be regarded as "law" of sufficient "quality" for the purposes of the Court's case-law. Consequently, the interference with the applicants' right to respect for their private life and correspondence could not be said to have been "in accordance with the law" within the meaning of Article 8 of the Convention.

Principal facts

At the time of the events the applicants (fourteen Turkish nationals) were detained in various Turkish prisons in connection with alleged membership of a terrorist organisation, following the attempted military coup of 15 July 2016. Some of them were subsequently released while others are still in detention.

While in detention, the applicants applied to the competent judicial authorities seeking an end to the practice of monitoring and/or systematically uploading their correspondence – both incoming and outgoing – onto the National Judicial Network Server (*Ulusal Yargı Ağı Bilişim Sistemi* – "UYAP").

The authorities to which they applied (enforcement judges and assize courts) dismissed their claims, taking the view that the practice in question was compatible with the procedure and the law. The Constitutional Court subsequently rejected the individual applications lodged by the applicants.

Complaints, procedure and composition of the Court

All the applicants relied on Article 8 of the Convention (right to respect for private life/right to respect for correspondence).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its 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.

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.

Some of the applicants also relied on Article 6 of the Convention (right to a fair trial).

The applications were lodged with the European Court of Human Rights in 2018 and 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (North Macedonia),
Gilberto **Felici** (San Marino),
Saadet **Yüksel** (Turkey),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private life and correspondence\)](#)

The Court considered that the applicants' private correspondence was liable to contain personal information falling within the scope of protection of their private life.

In the Court's view, the fact that this private correspondence had been scanned and uploaded onto the UYAP server did indeed constitute interference with the applicants' right to respect for their private life and their correspondence. Where personal data in particular were concerned it was essential to have clear, detailed rules governing the scope and application of such measures, together with minimum safeguards aimed at preserving the integrity and confidentiality of data and procedures for their destruction, in order to provide the persons concerned with sufficient guarantees. In that connection the Court noted that the parties disagreed as to the existence of a legal basis for the interference in question.

The Court observed that at the relevant time the monitoring of the correspondence of remand and convicted prisoners had been provided for by section 68 of Law no. 5275 and regulations 122 and 123 of the Regulations of 20 March 2006. Neither those provisions as in force at the relevant time, nor any other legislative or administrative provision, contained any reference to the scanning or uploading of prisoners' correspondence onto the UYAP server.

It also noted that the uploading of prisoners' correspondence onto the server stemmed directly and specifically from an instruction issued by the Ministry of Justice on 10 October 2016 and reissued on 1 March 2017. According to the instruction, "with the exception of faxes and letters in sealed envelopes sent by remand and convicted prisoners to their lawyers for defence purposes or for submission to the authorities (in the context of the procedures and principles provided for in the legislative decrees), all letters, faxes and requests which prisoners – in particular those detained in connection with terrorist offences or organised crime – wish to send, or which are sent to them, must be scanned and uploaded onto the UYAP server." The Government contended that the documents in question were to be regarded as circulars issued by the Ministry of Justice, and thus sufficed to demonstrate that the interference in question had been in accordance with the law. However, the Court noted that they had been addressed to the public prosecutors and prison authorities. It observed that there was nothing in the case file or in the Government's submissions to suggest that the letter of 10 October 2016, sent out again on 1 March 2017, had been made accessible to the public in general or to the applicants in particular.

In the Court's view, the documents of 10 October 2016 and 1 March 2017 had thus been internal unpublished documents containing instructions from the Ministry of Justice to prisons. As a matter of principle, they did not have binding force. Thus, texts of this kind, which were not issued under

any rule-making powers, could not be regarded as “law” of sufficient “quality” for the purposes of the Court’s case-law, capable of affording adequate legal protection and the legal certainty necessary to prevent arbitrary interference by public authorities with the rights guaranteed by the Convention. Hence, the interference complained of could not be said to have been “in accordance with the law” within the meaning of Article 8 of the Convention. There had therefore been a violation of that provision.

Article 6 (right to a fair trial)

Seven of the applicants complained of a lack of fairness in the proceedings before the domestic authorities (enforcement judge and/or assize court) on account of the non-disclosure of the public prosecutor’s opinion.

The Court noted, in particular, that the public prosecutors’ opinions in the proceedings before the assize courts had been confined to stating that the contested decisions of the enforcement judges were compatible with the procedure and the law. It also observed that the applicants had not demonstrated that they could have adduced any new evidence of relevance for the consideration of their cases in reply to the public prosecutors’ opinions. This complaint was therefore inadmissible under Article 35 §§ 3 (b) and 4 of the Convention for lack of significant disadvantage.

Just satisfaction (Article 41)

The Court held, by a majority (6 votes to 1), that the finding of a violation constituted in itself sufficient just satisfaction in respect of the non-pecuniary damage sustained by the applicants.

The Court also held, unanimously, that Turkey was to pay six of the applicants 500 euros (EUR) each in respect of costs and expenses.

Separate opinion

Judge Koskelo expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in French.

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Press contacts

echrpresse@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Inci Ertekin (tel : + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

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.