



Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 11 judgments on Tuesday 24 November 2020 and 64 judgments and / or decisions on Thursday 26 November 2020.

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 24 November 2020

[Bardali v. Switzerland \(application no. 31623/17\)](#)

The applicant, Akram Bardali, is an Iraqi national who was born in 1984.

The case concerns the applicant's conditions of detention in Champ-Dollon Prison in the Canton of Geneva.

On 15 April 2015 Mr Bardali was sentenced to 36 months' imprisonment by the Criminal Court of the Canton of Geneva for attempted grievous bodily harm and unlawful entry into Switzerland. In prison he went on hunger and thirst strike in protest against his conviction, which he considered unfair. On 8 May 2015 he tried to commit suicide. He was taken to Geneva Hospital for emergency treatment and then transferred to the prison psychiatric unit near Champ-Dollon Prison, where he was returned on 11 May 2015.

Mr Bardali subsequently applied to the Canton of Geneva Criminal Appeal and Review Division complaining, among other things, of the overcrowding in the Champ-Dollon Prison. He stated that since he was sharing a cell measuring about 10 m² with two other detainees, he was unable to move around in the cell, as the 3.39 m² of individual space available to him also contained furniture. The Court of Justice acknowledged those conditions of detention, but ruled that they were not incompatible with human dignity.

The Federal Court dismissed Mr Bardali's appeal. It noted that the applicant had indeed been detained for 98 consecutive days, from 18 April 2015 to 28 July 2015, in an individual cell occupied by three detainees, leaving him with 3.39 m² of individual space.

Nevertheless, the Court held that the three-month deadline set out in domestic case-law – after which such conditions of detention were no longer tolerable and became incompatible with human dignity – was indicative, to be taken into account in the overall assessment of the actual conditions of detention, including the state of hygiene and ventilation, water and food supplies, heating and lighting. The Court considered that in the present case those conditions had been acceptable. In the light of all the circumstances and having regard to the fact that the period of detention at issue had only very slightly exceeded the three-month deadline, the Federal Court concluded that Mr Bardali had not been detained in conditions incompatible with human dignity.

Mr Bardali was transferred to La Brenaz Prison in Puplinge, where he finished serving his sentence on 5 March 2018.

Relying on Article 3 (prohibition of torture) of the European Convention on Human Rights, the applicant complains, in particular, that he had only 3.39 m² of individual space – 1.59 m² discounting the area occupied by furniture – for 98 consecutive days' detention in Champ-Dollon Prison.

Bahaettin Uzan v. Turkey (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 concerns the applicant’s complaint with regard to criminal proceedings brought against him in what the Turkish courts 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”), was accused of developing a software programme that was 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 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, the applicant complains 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 argues in particular that the Istanbul 8th Assize Court that convicted him was an extraordinary tribunal that infringed the principle of trial before “a rightful judicial authority” and that the President of the Istanbul 8th Assize Court was biased, while the involvement of the Minister of Justice in setting up that court also compromised its structural or objective independence and impartiality.

[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 concerns 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) and on Article 1 of Protocol No. 1 (protection of property), the applicant complains that the annulment of the contract and retention of his guarantee were unlawful and infringed his rights.

[Muharrem Güneş and Others v. Turkey \(no. 23060/08\)](#)

The case concerns 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), the applicants complain of an infringement of the right to the peaceful enjoyment of their property.

[ŞİK v. Turkey \(no. 2\) \(no. 36493/17\)](#)

The applicant, Ahmet Şık, is a Turkish national who was born in 1970 and lives in Istanbul (Turkey). He is a journalist by profession. At the relevant time he worked for the daily newspaper *Cumhuriyet*.

The case concerns Mr Şık's initial and continued pre-trial detention on account of articles, tweets and interviews which he published in *Cumhuriyet* and which criticised government policy.

Mr Şık was arrested at home and taken into police custody in December 2016 on suspicion of disseminating propaganda on behalf of organisations considered by the government as terrorist organisations (in particular, the PKK (the Kurdistan Workers' Party, an illegal armed organisation), FETÖ/PDY (Fethullahist Terror Organisation/Parallel State Structure), and the DHKP/C (People's Revolutionary Liberation Party/Front)).

The following day he was questioned by the Istanbul public prosecutor, whose questions focused mainly on 11 tweets and five articles published on the *Cumhuriyet* website and in the newspaper's print edition. The same day Mr Şık appeared before the Istanbul 8th Magistrate's Court, which ordered his pre-trial detention.

The courts subsequently made several orders for Mr Şık's continued pre-trial detention, on the grounds that the offence of which he was accused was among the "catalogue offences" listed in Article 100 § 3 of the Code of Criminal Procedure. The courts took the view, in particular, that Mr Şık posed a flight risk.

In sum, Mr Şık was placed in pre-trial detention on 30 December 2016 and was released on 9 March 2018 by the Istanbul Assize Court, which tried him on a charge of assisting terrorist organisations without being a member of them, an offence under Article 220 § 7 of the Criminal Code.

On 25 April 2018 the Istanbul Assize Court sentenced Mr Şık to seven years and six months' imprisonment for assisting the terrorist organisations the PKK, the DHKP/C and FETÖ without being a member of those organisations. The applicant lodged an appeal which was dismissed.

Mr Şık subsequently appealed to the Court of Cassation, which on 18 September 2019 quashed the appellate judgment. The case was then remitted to the Istanbul Assize Court, which on 21 November

2019 departed from the Court of Cassation judgment of 18 September 2019. The case is currently pending before the plenary criminal divisions of the Court of Cassation.

Mr Şık also made an individual application to the Constitutional Court which was dismissed on 2 May 2019 as being manifestly ill-founded.

Relying on Article 5 §§ 1 and 3 (right to liberty and security), Mr Şık contends that his initial and continued pre-trial detention was arbitrary and was not based on a reasonable suspicion. He argues that the facts on which the suspicions against him were based came within the scope of his activity as a journalist and of his freedom of expression.

Under Article 5 § 4 (right to speedy review of the lawfulness of detention), he complains about the length of the proceedings before the Constitutional Court.

Relying on Article 10 (freedom of expression), Mr Şık complains that his initial and continued pre-trial detention was ordered on account of his work as a journalist. He argues, in particular, that he conveyed information to the public as part of a debate on matters of public interest, without ever supporting or condoning the use of violence.

Under Article 18 (limitation on use of restrictions on rights), Mr Şık alleges that his detention was designed to punish him for his criticisms of the government or for the information he conveyed to the general public which displeased the political authorities. He contends that the purpose of his initial and continued detention was to subject him to judicial harassment on account of his journalistic activities.

[Unuane v. the United Kingdom \(no. 80343/17\)](#)

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

The case concerns 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), the applicant complains that his deportation to Nigeria disproportionately interfered with his family and private life. He further complains, under Article 8 and Article 13 (right to an effective remedy), that domestic law prevented the relevant decision-makers from conducting a balanced assessment of his rights.

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.

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Name	Main application number
Başaran v. Turkey	2984/05
Bayram v. Turkey	46458/13
Karagöz v. Turkey	2882/05
Kocaman v. Turkey	77043/12
Ünal and Bozbağ v. Turkey	15490/07

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Name	Main application number
Agayev v. Azerbaijan	48710/13
Farkas v. Hungary	63408/19
Fazekas and Others v. Hungary	64876/19
Király and Others v. Hungary	5887/20
Leébné Tóth v. Hungary	57835/19
Moreira Dos Santos v. Italy	58528/13
Salvia v. Italy	32711/19
Atamanenco v. the Republic of Moldova	16947/15
Cudreaşova v. the Republic of Moldova	19646/15
Țipovici v. the Republic of Moldova	22144/15
Mercur System A.D. and Others v. Montenegro	5862/11
Beța and Others v. Romania	38077/16
Cuza v. Romania	44955/16
Dică and Others v. Romania	1816/16
Duță v. Romania	565/18
Feraru v. Romania	53520/16
Lăcătuș and Others v. Romania	39952/16
Lungu v. Romania	61857/16
Magearu v. Romania	33447/16
Mihalache and Others v. Romania	25962/16
Negru and Others v. Romania	42913/16
Nimară and Others v. Romania	12931/16
Paul and Others v. Romania	78570/16

Name	Main application number
Păvălucă and Others v. Romania	30188/16
Petru and Others v. Romania	20769/16
Teişanu and Others v. Romania	543/16
Bourosh and Meshcheryakov v. Russia	40724/17
Cherenkov and Others v. Russia	72643/16
Eya and Others v. Russia	17523/18
Kudryashov v. Russia	57529/17
Lozhkin and Others v. Russia	54071/17
Makarov v. Russia	4926/18
Medvedev and Others v. Russia	46440/16
Morozov v. Russia	19872/18
Prishchenko v. Russia	28563/17
Rokhlin v. Russia	36740/19
Safin v. Russia	35877/17
Shcherbatsevich v. Russia	13785/08
Slesarevskiy and Loktionov v. Russia	43538/16
Suslov and Mumindzhanov v. Russia	18185/19
Tekhnyuk and Others v. Russia	21027/18
Tyazhkov v. Russia	4672/19
Yagodnikov and Others v. Russia	22414/17
Denić and Stamenković v. Serbia	58944/18
Stamenković v. Serbia	58618/18
Kováčová v. Slovakia	63783/19
Žigon and Keber v. Slovenia	847/17
Artuç and Others v. Turkey	5693/12
Ay v. Turkey	58203/12
Bayram and Others v. Turkey	7551/10
Bozkaya v. Turkey	67423/11
Ceyhan and Others v. Turkey	23591/09
Erdoğan v. Turkey	7030/10
Halkların Demokratik Partisi v. Turkey	78850/16
Karakaplan v. Turkey	1477/09
Kepenek v. Turkey	46533/13
Öğrü v. Turkey	67492/17
Özbey v. Turkey	34740/10
Satıcı v. Turkey	67713/12
Türkoğlu and Others v. Turkey	17697/10
Uruç v. Turkey	39558/10
Mamedova v. Ukraine	20899/09
Pivovarov v. Ukraine	10605/11
Sayevych and Koval v. Ukraine	64547/19

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Press contacts

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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.