Joint briefing by Human Rights Watch, International Commission of Jurists, Turkey Human Rights Litigation Support Project (June 2025)

Defiance of European Court Judgments and Erosion of Judicial Independence

Türkiye's Challenge to EU Founding Values and Rule of Law Standards

Executive summary

Since 2024, a marked shift has taken place in Türkiye towards full consolidation of authoritarian rule, which 58 leading human rights, media freedom and legal groups alerted the EU to in an open letter from May 2025. Alongside a crackdown on the main opposition Republican People's Party (CHP) through politically motivated prosecutions and the removal of opposition mayors – most notably Istanbul Mayor Ekrem İmamoğlu – Turkish authorities have adopted a policy of widespread use of police violence against protesters and criminal investigations and prosecutions against hundreds of young protestors, lawyers and journalists. This is accompanied by blatant encroachments on the independence of the legal profession and judiciary.

Türkiye's dismal human rights and rule of law performance is underpinned by its persistent failure to comply with binding judgments of the European Court of Human Rights ("the ECtHR" or "the Court") and a broader departure from the legal standards enshrined in the European Convention on Human Rights("the ECHR" or "the Convention"), which form an integral part of the EU's own legal and normative framework. Türkiye accounts for the highest number of pending cases before the ECtHR, ranks among the countries most frequently found in violation of Convention rights, and is the worst performer among Council of Europe ("the CoE") Member States in terms of implementation of judgments.

This crisis of implementation of ECtHR judgments and the rule of law, which is intimately connected with the dismantling of judicial independence, poses a profound challenge to EU founding values as articulated in Article 2 of the Treaty on European Union and the Copenhagen criteria for membership, including respect for human rights, judicial independence and the rule of law. Three fundamental issues lie at the heart of this crisis.

First, Türkiye persistently evades Convention obligations and circumvents the implementation of the Court's judgments regarding its misuse of criminal law against perceived dissidents, through prosecutorial and judicial measures circumventing national or ECtHR judgments or hindering effective legal protection; mere procedural cooperation by Government authorities with the CoE while failing to substantively address violations and impeding implementation of ECtHR judgments; and statements or actions demonstrating overt non-compliance with the CoE in cases concerning perceived dissidents.

Second, Türkiye's non-compliance with the ECtHR and flagrant defiance of Convention standards is rooted in the "capture" of the judiciary by the ruling political coalition parties (AKP and MHP), as part

of a broader assumption of effective control over State institutions over the past decade and a half. Constitutional and legislative amendments have weakened or removed essential institutional safeguards while giving the executive complete control over the Council of Judges and Prosecutors, the body supposed to guarantee the independence of the judiciary. Combined with politically motivated arrest, dismissal and criminal and disciplinary proceedings against thousands of judges and prosecutors, this has eviscerated the independence of the judiciary and led to its politicisation and instrumentalization in pursuance of the government's objectives and interests. Domestic courts act to facilitate rather than remedy Convention violations and use detention and criminal proceedings as a means to silence individuals who express dissent or criticize the authorities.

Third, due to its lack of independence from the executive, politicised approach to compliance with human rights standards and ECtHR judgments, and intensifying political pressure and backlash, the Turkish Constitutional Court can no longer be regarded as an effective domestic remedy for violations stemming from the government's widespread repression of human rights defenders, opposition politicians, and others engaged in politically disfavoured expression or deemed to be government opponents and dissidents.

Although the Türkiye-EU accession process remains frozen – with resumption of negotiations obstructed in part by Türkiye's persistent failure to adopt the necessary measures regarding judicial independence and implementation of ECtHR judgments – Türkiye's persistent and deliberate erosion of rule of law and human rights protections demands a principled and strategic response from the EU in its political, financial, and institutional engagement with the country.

Binding and visible human rights conditionality can have a positive impact on the human rights situation in Türkiye. It is critical to avoid enabling and legitimising repression, and it is required by the EU's legal obligations to contribute to protecting and advancing democracy, the rule of law, and human rights in its external relations (Articles 3 and 21 of the Treaty on European Union). It is also key for the rule of law in Europe, the EU's credibility and cohesion as a project underpinned by the promotion of rule of law and human rights values, and for stable, secure and sustainable EU-Türkiye relations.

Within this perspective, Türkiye's evasion of its ECHR obligations and ECtHR judgments, lack of judicial independence, and ineffectiveness of the Constitutional Court should constitute urgent priorities in the EU's engagement with Türkiye. HRW, the ICJ and TLSP recommend:

To The European Commission, EU Member States, and the European External Action Service:

1. Make compliance with Türkiye's human rights obligations, including implementation of ECtHR judgments, a key priority in shaping stable, secure and sustainable EU-Türkiye relations and place it, along with demands for judicial reform, at the heart of political and economic cooperation and dialogue between the EU and Türkiye.

2. Issue unequivocal public statements denouncing the hollowing out of the right to political association, participation and representation in Türkiye as well as the associated crackdown on lawyers, independent media, civil society and the right to freedom of peaceful assembly in Türkiye. Such statements should clearly signal that the deteriorating human rights situation will hamper relations based on shared values and mutual interests.

3. Use all opportunities including high-level engagements, meetings, and negotiations to stress, both publicly and directly with the authorities, that the EU expects a reversal of negative rule of law and human rights trends, including ending misuse of criminal law and widespread arbitrary detentions, and non-implementation of ECtHR judgments, and ensuring judicial independence.

4. Reiterate that human rights are a non-negotiable and integral part of the EU's relations with Türkiye and that therefore tangible human rights improvements are essential to deepening bilateral trade and investment, including the modernisation of the EU-Türkiye Customs Union.

5. At high-level opportunities, publicly insist on Türkiye's full implementation of ECtHR judgments, particularly in the cases of Selahattin Demirtaş, Figen Yüksekdağ Şenoğlu and Osman Kavala, and on their immediate and unconditional release and full restoration of their rights, as well as that of other arbitrarily detained civic activists, lawyers, journalists, and human rights defenders, including dropping pending charges as well as vacating any convictions against them and fully restoring their civil and political rights.

6. Use all effective diplomatic and political channels to secure implementation of leading ECtHR judgments, including Kavala (28749/18); Selahattin Demirtaş (No. 2) (14305/17) and Yüksekdağ Şenoğlu and Others (14332/17); Öner and Türk (51962/12), Işıkırık (41226/09), Artun and Güvener (75510/01), Altuğ Taner Akçam (27520/07), and Nedim Şener group (38270/11); Oya Ataman group (74552/01); Yüksel Yalçınkaya (15669/20); Alparslan Altan group (12778/17) and Akgün (19699/18); Gurban group (4947/04); and Piskin (33399/18), imposing clear consequences for non-compliance.

7. Encourage Türkiye to provide a concrete action plan to resolve systemic deficiencies and demonstrate compliance with human rights standards, implement the ECtHR judgments, and adopt reforms of the CJP and ensure judicial independence more broadly, in line with Venice Commission and other human rights bodies' and organisations' key recommendations. Provide technical assistance to implement the necessary constitutional and legislative reforms.

8. Collaborate with regional and international organizations such as the CoE and UN and their human rights institutions and mechanisms with a view to pressing Türkiye to adhere to its human rights obligations and raise these issues during international human rights reviews. Maintain strong focus on Türkiye in the EU's statement on Human Rights situations that demand the Council's attention (item 4) at the UN Human Rights Council.

9. Ensure the EU delegation and member state missions in Türkiye step up their monitoring of trials of groups and individuals facing prosecution for peacefully exercising their right to freedom of expression and peaceful assembly.

10. Increase support to civil society and the independent legal profession in Türkiye, including through increased and sustained funding for those advocating for judicial independence and rule of law, monitoring compliance and disseminating information about violations; and more robust political support to human rights defenders and other actors facing unjust prosecution, restrictive legislation and closure proceedings.

To the European Parliament

1. Adopt robust resolutions and issue regular public statements condemning Türkiye's continuing political repression and strategies to evade its human rights obligations and demanding that Türkiye implement judicial and legislative reforms and comply with ECtHR judgments, including amending Constitutions and laws governing the CJP in line with the Venice Commission's opinions and recommendations.

2. Call on the European Commission, the European Council and the European External Action Service to make implementation of ECtHR judgments and judicial reform a priority in the EU's relations and engagement with Türkiye.

3. Plan a mission to Türkiye to raise political attention to politically motivated or charged detentions and prosecution and the situation of civil society and the legal profession.

4. Regularly engage and consult with stakeholders, including civil society, on Türkiye's non-compliance with ECtHR judgments, providing visibility to their plight on international platform.

Introduction

Türkiye's systematic failure to comply with its obligations under the European Convention on Human Rights ("the Convention" or "the ECHR"), implement the binding judgments of the European Court of Human Rights ("the ECtHR" or "the Court"), and act on decisions by Council of Europe institutions has reached a crisis point - one that, if not adequately addressed, poses not only a grave threat to the integrity of the Convention system, but also demands a principled and strategic response from the European Union ("the EU").

The Türkiye-EU accession process remains effectively frozen, with major contributing factors to the impasse being Türkiye's failure to implement reforms needed to accede to the bloc and continuous backsliding on rule of law and fundamental rights.[1] Judicial independence and implementation of ECtHR judgments represent key areas where a persistent failure to adopt the necessary measures has obstructed progress towards resuming negotiations.[2] Nevertheless, the EU continues to maintain deep political, financial, and institutional engagement with the country, including through the Instrument for Pre-Accession Assistance (IPA III), trade and Customs Union dialogue, migration cooperation frameworks, and bilateral diplomacy. These channels confer significant, but as yet untapped, leverage and responsibility on the EU to address Türkiye's persistent and deliberate erosion of rule of law and human rights protections.

As of November 2024, Türkiye accounted for the highest number of pending cases before the ECtHR, with 22,450 applications (representing 36.7% of the Court's total caseload).[3] Türkiye also ranks among the countries most frequently found in violation of Convention rights, notably those protected under Articles 5 (liberty and security), 6 (fair trial), 10 (freedom of expression), and 11 (freedom of assembly and association).[4] As of June 2024, judgements in 156 leading cases and 375 repetitive cases remained unimplemented, making Türkiye the worst performer among Council of Europe ("CoE") Member States. [5]

The situation has further deteriorated in 2025. In the aftermath of the March 2024 local elections, Turkish authorities intensified politically motivated prosecutions and extended the crackdown to the main opposition Republican People's Party (CHP). This has included removal of opposition mayors-most notably, Istanbul Mayor Ekrem İmamoğlu, widespread use of police violence against protesters, and the initiation of criminal investigations and prosecutions against hundreds of young protestors, lawyers and journalists.

The dismissal and prosecution of the Istanbul Bar Association's Executive Board is emblematic of the state's encroachment on the independence of the legal profession and judiciary. These actions represent

[1] See European Council, Conclusions of 26 June 2018 on Enlargement and Stabilisation and Association Process, paras. 31-35 (https://www.consilium.europa.eu/media/35863/st10555-en18.pdf); European Parliament, 'Türkiye's EU accession process must remain frozen', 7 May 2025 (https://www.europarl.europa.eu/news/en/press-room/20250502IPR28215/turkiye-s-eu-accession-process-must-remain-frozen).
[2] Ibid. See European Commission, Report on Türkiye 2024, pp. 4-5 (https://enlargement.ec.europa.eu/document/download/8010c4db-6ef8-4c85-aa06-814408921c89_en?filename=T%C3%BCrkiye%20Report%202024.pdf).
[3] European Court of Human Rights, Statistics Monthly 2024, published January 2025: https://www.echr.coe.int/documents/d/echr/stats-pending-month-2024-bil, an increase in the percentage (34.2%) of the court's caseload in 2023, see https://www.echr.coe.int/documents/d/echr/stats-analysis-2023-eng, p.7.
[4] For the 2023 statistics, see European Court of Human Rights, Violations by Article and State, January 2024.
[5] See Council of Europe Department of Execution of Judgments fact sheet on Türkiye: https://www.coe.int/en/web/execution/turkey .

a qualitative shift toward full consolidation of authoritarian rule, as stated in a May 2025 open letter addressed to the EU leadership signed by 58 leading human rights, media freedom and legal groups.[6]

This deterioration reflects Türkiye's instrumentalization of the judiciary and the use of detention and prosecution to silence political opponents and critics, previously addressed by the ECtHR in judgments that Türkiye refuses to implement. Despite two rulings by the ECtHR and infringement proceedings by the CoE's Committee of Ministers ("the Committee"), Türkiye has continued to arbitrarily detain Osman Kavala, and has failed to release Selahattin Demirtaş, Figen Yüksekdağ, and other opposition figures subject to arbitrary detention.[7] The state's refusal to implement the *Yüksel Yalçınkaya* judgment, despite the ECtHR's finding of systemic violations affecting thousands, demonstrates its rejection of supranational legal authority.[8] Other rulings, including those concerning former Constitutional Court judge Alpaslan Altan and public sector dismissals under emergency decrees, remain unimplemented, further eroding the rule of law and human rights.[9] This includes rejecting the ECtHR's authority to determine the compatibility of detention measures with domestic law.[10]

This trajectory is not only a CoE concern; it directly implicates the EU's external policy coherence and credibility, particularly in view of the EU's legal obligations under Article 21 of the Treaty on European Union (TEU), which requires it to advance democracy, the rule of law, and human rights in its external relations. Similarly, Article 3 TEU, on the objectives of the EU, provides that the EU contributes to the protection of human rights and respect for international law in its external relations. Continued financial and political engagement with Türkiye, in the absence of binding and visible human rights conditionality, risks enabling and legitimising this systemic breakdown.

This briefing to EU institutions, adapted from a January 2025 briefing by the same NGOs to CoE bodies,[11] addresses the central elements underpinning Türkiye's dismal rule of law and human rights performance. This includes its persistent failure to comply with binding judgments of the ECtHR and its broader departure from the legal standards enshrined in the ECHR, standards which form an integral part of the EU's own legal and normative framework.

The issues outlined in this briefing, ranging from the abuse of pretrial detention and criminal law to silence the exercise of freedom of expression, to the dismantling of judicial independence and the erosion of democratic pluralism, strike at the core of the EU's foundational values as articulated in Article 2 of the TEU and the Copenhagen criteria for membership. These developments demand not only scrutiny through the European Commission's annual Türkiye report and existing monitoring instruments, but decisive, coordinated action by the European Commission, the European Parliament, the Council, and Member States. Upholding the credibility and consistency of the EU's external action requires ensuring that any further engagement with Türkiye, whether political, financial, or institutional, is tied to concrete, measurable progress on human rights, judicial independence, and implementation of ECtHR judgments. Without such a commitment, the EU risks enabling impunity, undermining the Convention system it helped build, and weakening its leverage to promote rule of law and democratic

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[6] Open letter to President of the European Commission Ursula von der Leyen and European Council President António Costa regarding the assault on the right to political participation, the rule of law and human rights in Türkiye signed by 58 human rights, legal and media groups, May 16, 2025: https://www.hrw.org/news/2025/05/16/open-letter-president-european-commission-ursula-von-der-leyen-and-european-council

[7] ECtHR, *Proceedings Under Article 46 § 4, in the Case of Kavala v. Türkiye* (28749/18), paras. 143-145, 151, 161-162; ECtHR, *Selahattin Demirtaş (no. 2) v Turkey [GC]*, Application no. 14305/17, 22 December 2020, para. 442; *Yüksekdağ Şenoğlu and others v Turkey*, Application no. 14332/17, Judgment of 8 November 2022, para. 655.

[8] ECtHR, *Alparslan Altan v Turkey*, App. No. 12778/17, 16 April 2019, para. 112; *Baş v Turkey*, App no. 66448/17, 3 March 2020, para. 153; ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, 26 September 2023.

[9] See *Hurriyet Daily News*, "Justice Minister Slams ECHR Ruling on FETÖ Conviction," 27 September 2023: https://www.hurriyetdailynews.com/justice-minister-slams-echr-ruling-on-feto-conviction-186608

[10] ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, 26 September 2023, paras. 414 and 418.

[11] Briefing to the CoE institutions, TLSP, HRW and the ICJ, January 2025, https://www.turkeylitigationsupport.com/s/Advocacy-briefing-TLSP-HRW-and-ICJ-FINAL.pdf.

values in its neighbourhood. In the long run, an insufficient response to the issues outlined in this briefing further undermines the accession process and also risks widening the gap between the EU and Türkiye as strategic partners, sends the wrong signal to countries across the region and erodes the EU's credibility in promoting democratic standards and human rights globally.

I. Türkiye's practices aimed at evading Convention obligations and circumventing the implementation of the Court's judgments

Many of the cases from Türkiye before the ECtHR concern the repeated abuse by the responsible Turkish authorities of criminal law and proceedings in the course of the administration of justice. This includes unreasonable and arbitrary construal of provisions of criminal law combined with disregard for core procedural rights and the Convention, amounting to a persistent defiance of the Convention standards and ECtHR case-law.[12] Such practices threaten to undermine the effectiveness of the ECHR system not only within Türkiye but across CoE Member States, with clear negative repercussions on human rights, democracy and the rule of law in the EU and its neighbouring countries.

The CM's supervision of Türkiye's systemic non-implementation of ECtHR judgments reveals recurring practices aimed at avoiding fulfilling its Convention obligations, particularly in politically sensitive cases. These avoidance practices take three main forms:

(i) Prosecutors and judicial authorities issue decisions and take actions aimed at, or with the effect of, circumventing national or ECtHR judgments or hindering effective legal protection;
(ii) Government authorities appear to be cooperative with the CoE in a procedural sense, but the content of their submissions and answers to the CM and other bodies is hollow and fails to address the violations substantively, impeding the proper implementation of the ECtHR judgments;
(iii) Government authorities make statements and take actions that demonstrate overt non-compliance with the CoE.

The first category of prosecutorial and judicial decisions to circumvent ECtHR judgments encompasses two main trends. Prosecutors and judges in Türkiye's lower courts, the Supreme Court and the Constitutional Court simply fail to implement many ECtHR judgments, ignoring them altogether and continuing to prosecute and convict individuals on precisely the grounds where the ECtHR has found systemic problems and ordered general measures to be implemented.[13] Another circumvention tactic has seen prosecutors and judges repeatedly initiate overlapping criminal charges and proceedings based on the same or similar factual and legal grounds. This tactic has been well-documented in *Kavala v. Turkey*, *Selahattin Demirtaş v. Turkey (no. 2),* and *Atilla Taş v. Turkey*, where judicial authorities reclassified substantially the same facts as new 'crimes' to justify ongoing detention.[14] This practice was also highlighted by the Grand Chamber in its judgment in *Kavala v. Türkiye*.[15] In several cases against Kavala and others, the judicial authorities issued release orders that were not executed, as other arrest and detention orders were placed simultaneously. The Turkish government simultaneously uses these tactics to bolster its narrative against perceived dissidents and to legitimize its disregard for ECtHR judgments. Such practices amount to serious violations and abuse of legal process, especially when used to bypass judicial decisions by high national courts or by the ECtHR and to prevent

[12] See Committee of Ministers 1492nd meeting (March 2024) (DH) - Rule 9.2 - Communication from NGOs (Turkey Human Rights Litigation Support Project, Human Rights Watch, The International Commission of Jurists) (26/01/2024) concerning the case of Kavala v. Türkiye (Application No. 28749/18), https://hudoc.exec.coe.int/?i=DH-DD(2024)263E.
[13] Examples include ECtHR *Vedat Şorli v. Turkey*, 42048/19, 19 October, 2021 and ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, 26 September 2023.
[14] Committee of Ministers 1398th meeting (March 2021) (DH) - Rule 9.2 - Communication from NGOs (Human Rights Watch, The International Commission of Jurists and The Turkey Human Rights Litigation Support Project) (08/02/2021) in the case of Kavala v. Turkey (Application No. 28749/18) paras. 25-26, https://hudoc.exec.coe.int/?i=DH-DD(2021)186E .
[15] ECtHR, *Proceedings Under Article 46 § 4, in the Case of Kavala v. Türkiye* (28749/18), paras 143-145, 151, 161-162.

individuals from securing the effective protection of the law and the opportunity for release.[16]

The second category of avoidance practices that impede the implementation of ECtHR judgments sees Türkiye reducing compliance to mere procedural cooperation with the CoE stripped of substantive engagement with Convention standards. The Turkish government frequently emphasizes its "continuing dialogue" with Strasbourg, pointing to its active participation in the monitoring process and regular submissions to the CM on the state of implementation of ECtHR judgments. While invariably claiming to pursue the necessary steps to ensure compliance, the government's submissions and action plans are evasive, ignoring the lack of implementation of Convention rights on the ground, failing to hold the performance of prosecutors and courts to Convention standards, and making assertions that are superficial, symbolic and ultimately hollow.[17]

There are numerous leading cases against Türkiye pending implementation.[18] Although the CM has strongly urged the authorities to consider legislative amendments on several occasions, the government authorities have continued to refer to previous legislation or legislative amendments and to maintain in most cases that there is no need for further action.[19] Moreover, legislative changes presented as 'judicial reforms' in the context of addressing systemic issues have, in reality, worsened existing deficiencies in Convention compliance rather than resolving them.[20]

The third tactic of non-compliance with ECtHR rulings by both government and judicial authorities entails explicit refusal to accept and implement judgments. In those cases, the government authorities have overtly challenged the ECtHR's findings and the CM' decisions, denying the need for reform and the existence of systemic issues.[21] Specifically, in cases concerning perceived dissidents, both the Turkish authorities have openly defied the ECtHR's findings and questioned its authority to assess the compatibility of domestic law with the Convention, attempting to shift the narrative regarding applicants.[22] In some instances, the President and his governing coalition and advisors have publicly

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[16] Committee of Ministers 398th meeting (March 2021) (DH) - Rules 9.2 and 9.6 - Communication from NGOs (ARTICLE 19, Human Rights Watch, International Commission of Jurists, International Federation for Human Rights and Turkey Human Rights Litigation Support Project) (08/02/2021) in the case of Selahattin Demirtaş v. Turkey (No. 2) (Application No. 14305/17) and reply from the authorities (17/02/2021) paras. 59-63, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a1747c

[17] E.g. for general measures, Türkiye refers to " 'the new Human Rights Action Plan' and 'the new Judicial Reform Strategy Paper' which are envisaged to address, among others, human rights issues in Türkiye" (https://hudoc.exec.coe.int/?i=DH-DD(2024)803E) before the Committee of Ministers in the *Kavala* case. However, the previous Action Plan on Human Rights adopted in 2021 is criticised by many as falling severely short of addressing Türkiye's serious issues (See e.g. Amnesty International, "Turkey: The new action plan is a missed opportunity to reverse deep erosion of human rights," 25 March 2021, https://www.amnesty.org/en/documents/eur44/3883/2021/en/).

[18] See *Öner and Türk* group (51962/12, 31 March 2015); *Işıkırık* group; *Altuğ Taner Akçam* and *Artun and Güvener* groups; *Nedim Şener* group.

[19] See the "case description" notes available at https://hudoc.exec.coe.int/?i=004-36806; See the Committee of Minister's decision of 12-14 March 2024 concerning H46-36 Öner and Türk group (Application No. 51962/12) and other groups. See the Turkish government's Action Plan for *Öner and Türk* groups of January 2024 submitted to the Committee of Ministers, paras. 446, 486, 505-509, https://hudoc.exec.coe.int/?i=DH-DD(2024)39E .

[20] For example, Turkish Penal Code Article 220(6) ("committing a crime on behalf of a terrorist organization without being a member of the organization") was amended by Law No. 7499, which came into force on 2 March 2024. The revision failed to address the concerns raised by the TCC *Hamit Yakut* [Plenary Assembly] judgment*,* App no. 2014/6548, 10 June 2021, as well as the rulings of the ECtHR regarding the same issue, and the Constitutional Court in a November 2024 decision cancelled the amendment and ordered its revision on the basis that it was vague and did not meet the legality standard: see AYM, E.2024/81, K.2024/189, 05/11/2024.

[21] See e.g. the Turkish government's action plans submitted before the Committee of Ministers in the case of *Selahattin Demirtaş (No. 2) v. Türkiye*[GC], and *Yüksekdağ Şenoğlu and Others v. Türkiye,* https://hudoc.exec.coe.int/?i=DH-DD(2024)812E.

[22] TCC, *Yıldırım Turan*, App no. 2017/10536, inadmissibility decision of 4 June 2020, §119 (https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/10536) (In Yıldırım Turan, the TCC rejected the ECtHR's findings in *Baş* and *Alpaslan Altan* asserting that the ECtHR did not have the power to make a determination concerning the compatibility of a detention measure with domestic law. The TCC concluded that the detention of the applicant, a judge, based on judicial authorities' interpretation of "in flagrante delicto" could not be considered arbitrary and rejected the applicant's claim of a violation of his right to liberty and security as manifestly ill-founded).

attacked the ECtHR rulings or those TCC judgments in line with the Convention,[23] conduct that risks undermining the integrity of the Convention system and standards.

EU institutions have previously identified non-implementation of ECtHR judgments as a key issue complicating EU-Türkiye relations.[24] It is essential for the EU to consistently respond to and counter these entrenched strategies of non-compliance with ECtHR judgments by Türkiye's government and prosecuting and judicial authorities. An adequate and consistent response by the EU can increase pressure on Türkiye to implement critical ECtHR judgments and have a positive impact on the human rights of individuals arbitrarily tried and detained in the country, as well as a broader impact on freedoms of expression, association and assembly. This is called for by the EU's obligations under Article 21 TEU to advance democracy, the rule of law, and human rights in its external relations. It is also necessary for upholding the credibility of the ECHR system, safeguarding the rule of law in Türkiye and Europe, and ensuring that Türkiye constitutes a democratic partner aligned with European human rights standards.

II. The lack of independence and impartiality of the judiciary in Türkiye

Behind Türkiye's non-compliance with the ECtHR and flagrant defiance of Convention standards lies the increasing politicization of its entire judicial system, most clearly attributable to structural changes introduced with the 2017 constitutional amendments creating a presidential system of governance consolidating power in the office of the president. The lack of judicial independence in Türkiye has previously been recognised by EU institutions including the European Parliament, which has condemned the "political instrumentalisation of the judicial system in Türkiye".[25] Multiple examples described below further evidence that the judiciary not only lacks structural independence, but that the decision-making of authorities and bodies that administer the justice system, as well as individual actions and decisions of prosecutors and judges, are manifestly partisan and often taken in pursuance of the objectives of the government.

As a general principle of law recognized by the international community, judicial independence and impartiality, enshrined in the ECHR (Article 6) and in Türkiye's Constitution (Articles 9 and 138), is a part and parcel of the rule of law and therefore a fundamental EU value under Article 2 TEU.[26] Judicial independence is also protected under Articles 19[27] and 47 of the EU Charter of Fundamental Rights. It encompasses the procedure and qualifications for the appointment of judges, guarantees relating to their security of tenure, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature.[28] It requires freedom from external and internal undue pressure and influence,[29]

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[23] See, for example, President Erdoğan's statements against the ECtHR's *Selahattin Demirtaş (n. 2)* judgment at https://tr.euronews.com/2020/12/23/erdogan-aihm-in-demirtas-karar-tamamen-siyasidir.

[24] See European Parliament resolution of 21 January 2021 on the human rights situation in Turkey, in particular the case of Selahattin Demirtaş and other prisoners of conscience (2021/2506(RSP)), para. 12; European Commission, Türkiye Report 2024, p. 29.

[25] European Parliament resolution of 10 October 2024 on the case of Bülent Mumay in Türkiye (2024/2856(RSP)), para. 4. See also European Commission, Türkiye Report 2024, pp. 25-26; European Parliament resolution of 21 January 2021 on the human rights situation in Turkey, in particular the case of Selahattin Demirtaş and other prisoners of conscience (2021/2506(RSP)), para. 9.

[26] See the European Commission's EU Framework for the Rule of Law (11 March 2014), COM(2014) 158 final, p. 4; European Court of Justice, *Repubblika v Il-Prim Ministru* (C-896/19), paras. 62-65.

[27] See European Court of Justice, *Repubblika v Il-Prim Ministru* (C-896/19).

[28] Human Rights Committee, General Comment no. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 19. See also checklists for judicial independence provided in Venice Commission, Rule of Law Checklist, March 2016, CDL-AD(2016)007, p. 20, 22; European Court of Justice, *Commission v Poland* (C619/18), *Commission v Poland* (C-192/18), and *AB v Krajowa Rada Sądownictwa* (C-824/18) paras. 118 and 123.

[29] European Court of Justice, *Associação Sindical dos Juízes Portugueses* (C-64/16), para. 44; Bangalore Principles of Judicial Conduct, adopted by the United Nations Economic and Social Council (ECOSOC) Res. 2006/23, July 2006, Principle 1; Venice Commission, Rule of Law Checklist, March 2016, CDL-AD(2016)007, p. 20.

but also impartiality, including the appearance of impartiality.[30] Judicial independence and impartiality is essential for the effective investigation, prosecution and, where appropriate, criminal accountability for grave human rights violations,[31] and the protection of the full array of human rights.

The degradation of the independence and impartiality of the judiciary in Türkiye has occurred over a long period, and gradually led to what has been widely identified as the "capture" of the judiciary by the ruling political coalition parties (AKP and MHP) as part of its broader assumption of effective control over State institutions over the past decade and a half.[32] This capture has been enabled by successive constitutional and legislative amendments weakening or removing key safeguards, as well as politically motivated arrest, dismissal and criminal and disciplinary proceedings against thousands of judges and prosecutors.[33]

The lack of an independent judiciary is most fundamentally demonstrated by reference to the 2017 constitutional amendments, which accorded the president and government parties the power to select the majority of members of Türkiye's CJP, the main body administering the judiciary. With its own stated mission to uphold the rule of law and the independence and impartiality of courts, [34] the CJP and similar bodies in other jurisdictions have the duty to protect members of the judiciary from arbitrary interference by legislative and executive powers.[35] The radical change to the selection procedure and the composition of the CJP (with an amendment to Article 159 of the Constitution) eviscerated the possibility of the body acting independently and impartially.[36]

Under the 2017 amendment, the Minister and Deputy Minister of Justice remained *ex officio* members, a highly problematic manifestation of executive inference in the body's functioning retained from the body's previous composition. More dramatically, the 2017 amendment reduced the number of CJP members from 22 to 13, with the number appointed directly by the President or filled by *ex officio* government officials rising to 6 out of 13 (compared to 4 out of 22 previously). The remaining 7 members are elected by Parliament. Notably, none are now elected by the judiciary itself (previously 10 out of 22 had been), in contravention of European standards prescribing that at least a significant portion of judicial council members should be judges elected by their peers.[37]

The Venice Commission twice expressed serious concerns about these changes and their impact on the CJP's independence.[38] Most recently, in its December 2024 opinion on the CJP, the Commission

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[30] See e.g. ECtHR, *Campbell and Fell v. the United Kingdom*, App nos 7819/77 and 7878/77, 28 June 2014, para. 78.
[31] See e.g. Report of the UN Special Rapporteur on the Independence of Judges and Lawyers, 31 December 2003, para. 30, E/CN.4/2004/60.
[32] International Commission of Jurists (ICJ), "Turkey: the Judicial System in Peril: A briefing paper" (2016), https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf (p. 10). See also Transparency International, "Examining State Capture: Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey," 15 December 2020. Transparency International defines state capture as "efforts by private actors and public actors with private interests to redirect public policy decisions away from the public interest, using corrupt means and clustering around certain state organs and functions," p 6: https://images.transparencycdn.org/images/2020_Report_ExaminingStateCapture_English.pdf.
[33] See criticisms in e.g. Transparency International, Ibid, pp. 28-30; GRECO 4th evaluation round interim compliance report on Türkiye, "Corruption and Prevention in Respect of Member of Parliament, Judges and Prosecutors," published 12 December 2023: https://rm.coe.int/grecorc4-2023-12-final-eng-4th-interim-compliance-report-turkiye-conf-/1680ada6ef.
[34] CJP mission statement on website: www.hsk.gov.tr
[35] ECtHR, *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022, paras. 327 and 347; see also Venice Commission, Rule of Law Checklist, March 2016, CDL-AD(2016)007, p. 20, 22.
[36] "High Council of Judges and Prosecutors" prior to 2017.
[37] Venice Commission, Report on Judicial Appointments, CDL-AD(2007)028, para. 29; Consultative Council of European Judges (CCJE), Opinion No. 24 (2021): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, CCJE(2021)11, para. 30.
[38] In a 2017 opinion, the Venice Commission termed this composition "extremely problematic" for the independence of the judiciary: see Venice Commission Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017, No. 875/2017, 13 March 2017. para. 119. (Citing the Venice Commission's words, see also ECtHR, *Selahattin Demirtaş v Turkey (no.2)*, App no. 14305/17, 22

expressed the view that the arrangement whereby six members are selected by the president and another three or four by the parliamentary party under his control "gives the executive complete control over the body that is supposed to guarantee the independence of the judiciary."[39] The Commission went on to observe that: "This evident objective politicisation of the CJP entails a strong lack of public trust in the judiciary and the climate of fear and submission reported among judges and prosecutors witnessing what is perceived to be strategic dismissal, transfer or promotion of their colleagues."[40] It thus recommended a constitutional amendment to fundamentally revise the composition of the body to end the selection of members by the President and Parliament and to reintroduce election of at least half the members by prosecutors and judges themselves.[41]

The validity of the Venice Commission's concerns has been well confirmed in practice. For example, the *ex officio* CJP membership of the Deputy Minister of Justice has enabled the ruling political coalition to promote consecutively one prosecutor and one judge to the CJP as an apparent 'reward' for presiding over the prosecution or conviction in key cases against perceived government critics and opposition figures.[42]

President Erdoğan's direct appointments to the CJP have also been instrumentalized to serve his political agenda – overtly so since the 2017 constitutional amendment creating the presidential system no longer requires the president to relinquish ties with the political party to which they belong.[43] For example, in 2017 and 2021[44] President Erdogan appointed to the CJP a prosecutor who was involved, before and during his CJP mandate, in contested and flawed high-profile cases against government critics, one of which led to a judgment against Türkiye by the ECtHR.[45] This prosecutor was later elected as Deputy President of the CJP[46] and President of its Second Chamber, responsible for disciplinary sanctions and penalties, resulting in both chamber presidents now being Erdoğan-appointed members.

The election of the remaining 7 CJP members by Parliament has done little to ensure the independence of those members from the ruling AKP/MHP coalition. In 2017, two opposition parties (CHP and HDP) refused to participate in the selection of candidates by a joint parliamentary committee,[47] which led the

December 2020, para. 434; *Yüksekdağ Şenoğlu and others,* App no. 14332/17 and 12 others, 8 November 2022, paras. 637-638.).

[39] See Venice Commission, Türkiye, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, 141st Plenary Session (Venice, 6-7 December 2024),CDL-AD(2024)041: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)041-e, p. 12.

[40] Ibid.

[41] Ibid, p.29.

[42] Prosecutor H.Y., who drafted the indictment alleging 'link with the coup attempt and espionage' against Osman Kavala, was promoted to Deputy Justice Minister by a presidential decision in October 2020 days after the acceptance of the indictment. Similarly, since June 2022, Judge A. G., former chief judge of the court responsible for convicting opposition MP Selahattin Demirtaş in one of the multiple criminal proceedings based on his political statements (Istanbul 14th Assize Court), and for refusing to implement a 2020 judgment by the TCC finding terrorism-related criminal proceedings against an opposition MP (Kadri Enis Berberoğlu), in violation of the latter's rights, was also promoted to Deputy Minister of Justice and an ex officio member of the CJP.

[43] Prior to the amendment, the office of the president was designed to be nonpartisan, and the president's resignation from any political affiliation served as a crucial safeguard against politicized appointments to the judiciary.

[44] CJP members' mandate lasts four years so there have been two rounds of appointments by the President/Parliament, one in 2017 and one in 2021. The next will take place in 2025.

[45] The prosecutor in question, M. A. E., was involved in the highly political Gezi Park "Çarşı" case (involving supporters of the Besiktas football club accused of participating in the Gezi Park protests of 2013), in which he appealed the court's decision to acquit the accused (https://www.evrensel.net/haber/269841/savci-carsinin-beraatine-karsi-cikti). He also led the investigation in the notorious "Cumhuriyet newspaper case", in which the conviction of 18 journalists was sought on alleged terrorism-related charges following their arrest in 2016 (https://www.cumhuriyet.com.tr/haber/skandal-gazeteciligi-yargiladi-koltugu-kapti-1028834); ECtHR, *Sabuncu and Others v Turkey*, App no. no. 23199/17, 10 November 2020.

[46] Giving him several important powers, including over budget, under Article 159 of the Constitution and Articles 6(6) and Article 44(2) of Law no. 6087 on the Council of Judges and Prosecutors.

[47] The joint parliamentary committee votes to decide on three candidates per position to be filled, before a vote takes place in the general assembly between these candidates. For a discussion, see Fahri Bakırcı, 'On the Election of Members to the Council

ruling political coalition to nominate all candidates.[48] In 2021, a "quota" agreement was made prior to voting, in which the AKP/MHP coalition determined the names for 4 CJP seats and the İYİ Party/CHP determined the remaining 3 seats, excluding the HDP from the process.[49] Two members appointed through this process had previously worked for the AKP or held government positions,[50] and one had been previously appointed to the CJP by President Erdoğan himself.[51] These politically negotiated nominations were approved in the first round of voting, bypassing the confidential, multi-round voting system laid out in Article 159 of the Constitution, which is designed to safeguard a fair selection procedure. It seriously compromised the secrecy of the vote and reduced the likelihood that individual MPs would select CJP candidates based on objective, non-partisan criteria.[52]

The appointment procedure for the CJP itself provides clear evidence of the dismantling of the separation of powers in Türkiye. Rather than serving as a safeguard for judicial independence, the CJP appears to have become a mechanism for consolidating undue influence over the judiciary. Established standards in the ECtHR's jurisprudence on judicial independence requires decisions affecting the career of judges and prosecutors to be based on objective criteria and a transparent process.[53] However, reports suggest that the CJP's powers related to disciplinary proceedings, transfers,[54] promotions, and case and judicial formation appointments have been exercised in breach of the criteria laid out in Law no. 2802 on Judges and Prosecutors and with the purpose of furthering the interests of the ruling political coalition.[55] Striking examples include the CJP's actions in the case of Osman Kavala,[56] the measures taken against Judge Ayşe Sarısu Pehlivan,[57] the criminal proceedings involving opposition politician Ekrem Imamoğlu,[58] the Sinan Ateş murder case,[59] and the handling of a case involving a MHP local politician arrested for violent behaviour in court.[60]

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of Judges and Prosecutors and the Constitutional Court in Ensuring Independence of the Judiciary', 15 December 2021, DergiPark, https://dergipark.org.tr/en/download/article-file/2278599, pp. 36-41.

[48] Ibid. p. 45.

[49] See https://www.bbc.com/turkce/haberler-turkiye-57186006 ; Bakırcı, (*supra* note 47) pp. 41-44. If the method prescribed in Article 159 had been followed, a failure of the ruling bloc to secure a 2/3rd or 3/5th majority would theoretically lead to the opposition parties determining anywhere between 0 and 7 CJP members, due to the randomised drawing system envisaged. With the "quota" system this number was limited to 3 out of 7.

[50] See details of their biographies: https://www.hsk.gov.tr/bilal-temel ; https://www.hsk.gov.tr/havvanur-yurtsever and https://www.birgun.net/haber/hsk-nin-yeni-uyesi-havvanur-yurtsever-oldu-366938 ;

[51] See https://web.archive.org/web/20150909191540/http://www.hsyk.gov.tr/uyeler/uyeler/aysel-demirel.html

[52] Bakırcı, (*supra* note 47), p. 43.

[53] See e.g. ECtHR, *Bilgen v Türkey,* no. 1571/07, 9 March 2021, para. 63.

[54] Over the past few years, thousands of judges have been subject to forced transfer (https://www.karar.com/yazarlar/elif-cakir/hsknin-surgun-ettigi-hakim-sayisi-iki-degil-1593440).

[55] See Committee of Ministers 1492nd meeting (March 2024) (DH) - Rule 9.2 - Communication from NGOs (Turkey Human Rights Litigation Support Project, Human Rights Watch, The International Commission of Jurists) (26/01/2024) concerning the case of Kavala v. Türkiye (Application No. 28749/18) paras. 35-38. See also https://www.yargiclarsendikasi.org/post/hsknin-son-kararnamesi-ile-istek-disi-gorev-yeri-degistirilen-yargiclarimiz-icin-basin-aciklamamiz.

[56] The judge who refused to implement the ECtHR's judgment and sentenced Kavala to prison was previously appointed to his position despite failing to meet a 4-year seniority requirement (https://yetkinreport.com/en/2022/09/07/turkish-bar-associations-head-judges-and-prosecutors-are-in-fear/).

[57] Promptly after the ECtHR found a violation of her freedom of expression (Article 10) due to disciplinary measures for publicly criticising constitutional amendments of 2017 (*Sarısu Pehlivan v Türkiye,* App no. 63029/19, 6 June 2023), she was involuntarily transferred from Izmir to Adana (https://www.yargiclarsendikasi.org/post/hsknin-son-kararnamesi-ile-istek-disi-gorev-yeri-degistirilen-yargiclarimiz-icin-basin-aciklamamiz).

[58] Without providing any objective justification, the CJP terminated the permanent appointment of two of the three judges scheduled to examine the appeal against Imamoğlu's conviction and sentence (https://www.dw.com/tr/hsk-i%CC%87mamo%C4%9Flu-davas%C4%B1na-bakacak-istinaf-heyetini-de%C4%9Fi%C5%9Ftirdi/a-66628426).

[59] The prosecutor investigating the murder of former 'Grey Wolf' member Sinan Ateş, involving several suspects affiliated to the MHP, was replaced mid-investigation and transferred to a lower court (https://www.sozcu.com.tr/hsk-4-bin-9-hakim-ve-savcinin-yerini-degistirdi-dikkat-ceken-sinan-ates-detayi-p57254).

[60] The prosecutor who requested his arrest and the judge who ordered it were forcibly transferred to a different district, while the MHP mayor was released without charge (https://www.evrensel.net/haber/469813/hakim-ve-savci-suruldu-mhp-karaburun-ilce-baskani-erkan-ozen-tahliye-edildi).

Taken together, the factors that have severely undermined judicial independence in Turkiye are: mass dismissals and criminal proceedings initiated against judges and prosecutors following the 2016 coup attempt, the consolidation of power in the office of the President and, through his control of the parliament too, authority to determine the composition of the CJP, undermining the possibility of the body functioning independently.

The Venice Commission also highlighted the lack of judicial review of all CJP decisions. Although European standards require that the decisions - disciplinary decisions and all matters concerning the career of a judge and prosecutor - of a judicial council be subject to judicial review, domestic law precludes review before an independent judicial body of CJP decisions other than dismissal.[61] This has created an environment where decisions of significant consequence are shielded from scrutiny, exacerbating concerns about accountability, transparency and fairness.

The recruitment system for judges and prosecutors also fails to comply with standards on judicial independence. Notably, the board conducting the interviews is composed entirely of members of the executive, including several officials from the Ministry of Justice, one representative from the Justice Academy - a state institution under the Ministry's control - and the General Secretary of the CJP, who is appointed by the Minister of Justice.[62] One serving deputy justice minister who has been head of the interview board was previously elected five times as a member of parliament from the ruling AKP.[63] Rather than being based on objective criteria, these interviews lack transparency and multiple judicial actors have expressed concern that their outcome is pre-determined on the basis of whether candidates had been informally approved by the ruling political parties.[64] In this connection, in 2018 an opposition MP presented a list of over 100 newly recruited judges and prosecutors who had held active roles within the ruling AKP party.[65]

The recruitment process formally includes an oral interview following a written exam. However, between 2017 and 2018, after thousands of judges were dismissed under the state of emergency in the aftermath of the coup attempt, a presidential decree lifted the requirement to achieve a minimum score (at least 70/100) in the written exam, effectively allowing appointments to be made solely on the basis of interviews. Numerous candidates who performed well on the written exam were not recruited and the candidates reported interviews of no more than two or three minutes with no substantial questions.[66]

Finally, the consolidation of influence and even effective control over the judiciary is also evident in the continued political pressure on, and interference with, the judiciary in cases concerning perceived dissidents or others viewed as obstructing the interests of the ruling coalition. For instance, after President Erdoğan's recent reference to judges and prosecutors dismissed after the coup attempt as "flies" of "the FETÖ swamp" and criticized the Council of State's decision to reinstate 387 of them, Minister of Justice Yılmaz Tunç announced that the Council of State decision would be re-examined

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[61] Venice Commission, Türkiye, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, 141st Plenary Session (Venice, 6-7 December 2024),CDL-AD(2024)041, paras. 84-86. See also ECtHR, *Bilgen v. Turkey*, App no. 1571/07, Judgment of 9 March 2021; ECtHR, *Oktay Alktan v Türkiye,* App no. 24492/21, Judgment of 20 June 2023; *Sarisu Pehlivan v Türkiye*, App no. 63029/19, Judgment of 6 June 2023.

[62] Law No. 2802 on Judges and Prosecutors, Article 9A.

[63] See news report, Birgün daily newspaper, "Hakimleri AKP'nin topilicisi secmis" ("Judges were chosen by AKP's promoter of favouritism"), https://www.birgun.net/haber/hakimleri-akpnin-torpilcisi-secmis-588205, January 3, 2025.

[64]See statements of former Istanbul Bar Association President Mehmet Durakoğlu available at https://www.gazeteduvar.com.tr/yargida-torpil-iddiasi-cok-uzun-yillardir-isliyor-haber-1508357 ; and statements by former Court of Cassation prosecutor Ömer Faruk Eminağaoğlu available at https://www.gercekgundem.com/guncel/mulakatlarda-torpil-iddiasi-akpnin-yargidaki-kadrolasmasinin-temeli-mulakatlar-402250.

[65] See https://www.diken.com.tr/chpli-yarkadas-hakim-savci-atanan-akplileri-acikladi-113-kisilik-liste/

[66]See https://gazetememur.com/kpss/turkiye-2ncisi-3-dakikada-elendi-mulakat-mulkun-temeli,NOZqN1Ubsk29H7qTqX_q6Q;https://www.gazeteduvar.com.tr/gundem/2019/09/05/hakim-savci-sinavinda-mulakat-tartismasi; https://www.gazeteduvar.com.tr/savci-adayi-mulakat-belgesine-ulasti-bu-kadar-rezilligi-tahmin-etmezdim-haber-1584495.

by the CJP.[67] In the case of imprisoned opposition MP Can Atalay convicted in the Gezi Park trial, President Erdoğan openly warned the TCC, which had found violations of Mr. Atalay's rights, "not to underestimate the steps taken by the Court of Cassation", implying potential repercussions against the TCC members.[68]

The current judicial system in Türkiye appears to function within a self-perpetuating cycle of political influence: the government controls or unduly influences the recruitment of judges and prosecutors, some of whom are appointed to the CJP by the government and allies with political control over parliamentary appointments,[69] and the CJP then holds significant control over the rest of the judiciary. This enables the ruling coalition to maintain pressure on judges and prosecutors both from within and from outside the judiciary. Such a situation spells the fundamental dismantling of the most essential safeguards for the existence of an independent and impartial judiciary. Given the indispensable nature of respect of the rule of law as an EU founding value, as well as the importance of implementation of ECtHR judgments for EU-Türkiye relations, using all available means to ensure that Türkiye takes the necessary measures to ensure judicial independence should constitute an urgent priority in EU Member States' and EU institutions' relations with Türkiye.

III. Effectiveness of the Constitutional Court as a remedy in cases involving the detention and prosecution of human rights defenders, opposition politicians and other dissenters

There are strong grounds to conclude that the TCC can no longer be regarded as an effective domestic remedy for violations stemming from the Turkish government's widespread repression of human rights defenders, opposition politicians, and others engaged in politically disfavoured expression or deemed to be government opponents and dissidents. The European Commission has already identified non-implementation of Constitutional Court judgments as one aspect of non-implementation of ECtHR judgments and the absence of judicial independence.[70] However, the independence and effectiveness of this court has been jeopardised by a broader range of internal and external factors that should be addressed to ensure human rights protection, democracy and the rule of law in Türkiye.

Article 13 of the ECHR guarantees the right to an effective remedy for Convention violations. According to the ECtHR's case law, for a remedy to be considered effective, "the national authority that provides the remedy in question must be independent and capable of providing redress".[71] The ECtHR assesses not only the existence of formal remedies within the legal system of the Contracting Party, but also considers the broader legal and political context in which these remedies operate, as well as the personal circumstances of the applicants.[72] Additionally, a domestic remedy cannot be considered effective if it lacks minimum guarantees of promptness[73] or if the State fails to ensure its implementation when granted.[74] Given these criteria, there are five main grounds to challenge the ECtHR's and CM's assumption that the individual application procedure to the TCC serves as an effective remedy in cases of detention, especially in the context of politically disfavoured activities.[75]

First, the current method of appointment of the TCC members precludes its independence from the executive. The President has the power to appoint 12 out of the 15 members of the TCC. As the Venice Commission noted, the President's political affiliations compromise his neutrality in this context.[76] As

[67] https://www.ensonhaber.com/gundem/adalet-bakani-yilmaz-tunc-danistayin-fetoculere-yonelik-karariyla-ilgili-konustu
[68] See https://www.aljazeera.com/news/2023/11/10/erdogan-criticises-top-turkey-court-stoking-judicial-crisis
[69] Under Article 159 of the Constitution, 8 out of 13 members of the CJP are members of the judiciary.
[70] See European Commission, Türkiye Report 2024, pp. 25-26.
[71] ECtHR, *Csüllög v. Hungary*, App no. 30042/08, 7 June 2011, para. 46.
[72] ECtHR, *Akdivar and Others v. Turkey,* App no. 21893/93, 16 September 1996, para. 69
[73] ECtHR, *Kadiķis v. Latvia (no. 2)*, App no. 62393/004, 4 May 2006, para. 62.
[74] ECtHR, *Kenedi v. Hungary*, App no. 31475/05, 26 May 2009, § 47; *Kaić and Others v. Croatia*, App no. 22014/04, 17 July 2008, para. 40.
[75] In *Uzun v. Turkey* (no. 10755/13, 30.04.2013) the Court recognized the remedy of an individual application before the Constitutional Court as an effective remedy. After this judgment, the ECtHR made no exceptions to this jurisprudence.
[76] Venice Commission Opinion No. 875/2017 (*supra* note 38), para. 94; Bakırcı (*supra* note 47) pp. 54-55.

their biographies reveal, five members currently appointed by President Erdoğan have previously held government positions: one was chief advisor to the President;[77] two are former Deputy Ministers of Justice (who were *ex officio* members of the CJP);[78] one was a former official in the Ministry of Justice;[79] and one was a former Director of Presidential Administrative Affairs.[80] Additionally, two of the three members elected by Parliament have also been affiliated with the government or the ruling party.[81]

The President appoints two TCC members from the Court of Cassation and two from the Council of State. Given the forementioned lack of structural independence of the CJP, which elects the members of both courts, this gives the executive added and undue influence over the TCC.[82] For instance, İ. F. , who was involved in the prosecution of several politically charged criminal cases (including the Gezi Park case), was appointed to the TCC after just 20 days of tenure at the Court of Cassation.[83] Similarly, Y.A., recently appointed from the Council of State, played a role in highly political decisions such as approving Türkiye's withdrawal by presidential decree from the Istanbul Convention.[84]

Secondly, there is a clear correlation between constitutional changes affecting the structural independence of the TCC and the TCC's oversight of, and effectiveness in ensuring, human rights guarantees.[85] In particular, the close links described above between many TCC members and the government have undermined the court's willingness and ability to address certain human rights law violations on the merits and provide effective remedies and reparation for violations affecting perceived dissidents and government critics. For example, despite the ECtHR's rare finding of a violation of Article 18 Convention due to the arbitrary detention of human rights defender Osman Kavala, the TCC refused to find his continued detention to be a violation of his rights.[86] The TCC also found the application brought by judge Alparslan Altan, detained in the aftermath of the coup attempt, inadmissible. Yet, in a judgment finding violations of Altan's rights, the ECtHR highlighted the TCC's failure to address his argument that there was no concrete evidence that could justify his pre-trial detention.[87] The TCC, in a later judgment explicitly refused to implement the ECtHR's judgments concerning the pre-trial detention of judicial officers including Altan.[88]

The TCC's judgments may consist of a combination of rights-compliant and non-compliant approaches, depending on the sensitivity of the issue, government policies and priorities, and the judicial formation hearing the case.[89] Cases relating to the use of the encrypted communication application ByLock provide a striking example of this selective approach to compliance with human rights standards and ECtHR case-law. In *Yalçınkaya v Türkiye,* the ECtHR found a violation of Articles 6 and 7 Convention in relation to the use of ByLock as criminal evidence[90] and ordered that Türkiye undertake general measures under Article 46. Yet, the President of the TCC expressed disagreement, stating "ultimately,

[77] See biography: https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/doc-dr-recai-akyel/
[78] See biographies: https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/yildiz-seferinoglu/ https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/selahaddin-mentes/
[79] See biography: https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/baskanvekilleri/basri-bagci/
[80] See biography: https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/doc-dr-metin-kiratli/
[81] See biographies: https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/muhterem-ince/; https://bianet.org/haber/aym-uyesinden-yargitay-a-gonderme-karincalar-fili-cok-kiskanir-290132
[82] Venice Commission Opinion No. 875/2017 (*supra* note 38), para. 121.
[83] See Communication of 26 January 2024 by NGOs in *Kavala v. Türkiye*, para. 36.
[84] https://www.hukukihaber.net/yilmaz-akcil-anayasa-mahkemesi-uyeligine-secildi
[85] See Bakırcı (*supra* note 47), p. 61.
[86] TCC, *Mehmet Osman Kavala (2)*, App no. 2020/13893, 29 December 2020, https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/13893.
[87] ECtHR, *Alparslan Altan v Turkey,* App no. 12778/17, 16 April 2019, para. 138.
[88] See below para. 27.
[89] Bertil Emrah Oder, 'The Resistance-Deference Paradox', 28 September 2022, https://verfassungsblog.de/the-resistance-deference-paradox/.
[90] ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, 26 September 2023.

the courts in Türkiye will make the decision".[91] Since then, several TCC judgments have failed to comply with the ECtHR judgment[92] and the court has been delaying rulings on related cases, seemingly as a means to avoid implementing *Yalçınkaya*.[93] In September 2024, the local court hearing the retrial of Yalçınkaya on exactly the same evidence handed down the same sentence against him, despite the ECtHR ruling that the evidence used in the initial sentencing did not comply with the Convention standards.[94]

Thirdly, the TCC's lack of a transparent prioritization policy contributes to its selectivity and facilitates interference with its independence. While some cases are concluded quickly, others, particularly those involving politically sensitive issues or government critics, tend to face unreasonable delays, precluding an effective remedy. For instance, applications concerning the suspension of MPs' mandate were decided only after the mandate lapsed or the MP was barred from running for office due to a terrorism-related conviction.[95] In addition, an application lodged by the imprisoned opposition politician Selahattin Demirtaş, filed in November 2019, remains pending despite the ECtHR's finding of a violation of Article 18 ECHR concerning his detention, despite repeated warnings from the CM.[96]

Fourthly, there is a growing and visible trend of intentional non-implementation of TCC judgments by lower courts, particularly on the rare occasions when the Court has reached timely decisions on the merits in cases not favoured by the government. Recent examples of non-implementation include a pilot judgment requiring Parliament to amend overbroad anti-terrorism legislation[97] and judgments requiring lower courts to suspend criminal proceedings against MPs with parliamentary immunity.[98]

Fifthly, the recent case of opposition MP Can Atalay, a co-defendant of Osman Kavala, constitutes a turning point which has firmly shaken the already limited authority of the TCC or the rare possibility that it could provide a domestic remedy in exceptional cases. In September 2023, the Court of Cassation refused to comply with the TCC's ruling on parliamentary immunity, asserting the TCC lacked authority to decide on the issue.[99] The Court of Cassation went on to uphold the conviction and 18-year sentence of Atalay in the Gezi Park trial, despite his election as MP in May 2023. The TCC found a violation of Atalay's rights to be elected, conduct political activities and his right to liberty and security, ordering his release from detention and a retrial.[100] However, the Court of Cassation not only ignored this order but also took the unprecedented step of seeking a criminal investigation against the TCC

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[91] https://www.gazeteduvar.com.tr/anayasa-mahkemesi-baskani-arslan-aihm-kararina-biz-katilmiyoruz-haber-1640350

[92] E.g. TCC, *Ali Faik Aygun,* App no. 2018/23712, 16 November 2023, para. 51 (citing the TCC's previous case law and making no reference to *Yalçınkaya v Türkiye*). See also: https://kronos37.news/aym-eski-raportoru-dr-selami-er-yazdi-anayasa-mahkemesi-hala-etkin-bir-ic-hukuk-yolu-sayilabilir-mi/ ; https://medyascope.tv/2024/07/15/rusen-cakirin-konugu-kerem-altiparmak-yuksel-yalcinkayanin-bylock-davasi-aihm-tarihinin-en-buyuk-buzdagi/

[93] https://medyascope.tv/2024/07/15/rusen-cakirin-konugu-kerem-altiparmak-yuksel-yalcinkayanin-bylock-davasi-aihm-tarihinin-en-buyuk-buzdagi/

[94] https://www.indyturk.com/node/745040/haber/yerel-mahkeme-yal%C3%A7%C4%B1nkaya-davas%C4%B1nda-ai%CC%87hm-karar%C4%B1na-uymad%C4%B1-ayn%C4%B1-ceza-verildi

[95] See ECtHR, *Selma Irmak,* App no. 2018/9763 of 15 March 2018, 2 May 2024; *Osman Baydemir (3),* App no. 2018/10290 of 16 April 2018, Inadmissibility decision of 8 February 2023.

[96] See the latest CM Decision, H46-35 Selahattin Demirtaş (No. 2) group v. Turkey (Application No. 14305/17), CM/Del/Dec(2024)1501/H46-35, para. 3.

[97] TCC, *Hamit Yakut* [Plenary Assembly], App no. 2014/6548, Judgment of 10 June 2021; See https://www.gazeteduvar.com.tr/tbmm-pilot-karara-uymadi-hak-ihlali-kararlari-verilmeye-basladi-haber-1622034. While Article 220(6) was recently amended by Law No. 7499, which came into force on 2 March 2024, the revision fails to address the concerns raised by the TCC in its pilot judgment, as well as the rulings of the ECtHR regarding the same issue (see Amnesty International, Türkiye: New Judicial Package Leaves People at Continued Risk of Human Rights Violations, 29 February 2024, available at https://www.amnesty.org/en/wp-content/uploads/2024/03/EUR4477652024ENGLISH.pdf).

[98] See TCC, *Kadri Enis Berberoğlu (2),* App no. 2018/30030, 17 September 2020 (https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/30030); *Kadri Enis Berberoğlu (3)*, App no. 2020/32949, 21 January 2021 (https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/32949).

[99] See https://www.birgun.net/haber/prof-dr-kaboglu-yargitay-in-can-atalay-hukmunu-degerlendirdi-anayasaya-iskence-eden-bir-karar-472974 .

[100] TCC, *Can Atalay (2)* [Plenary Assembly], App no. 2023/53898, 25 October 2023, paras. 89-93 and 107-108 (https://kararlarbilgibankasi.anayasa.gov.tr/BB/2023/53898).

members.[101] President Erdoğan responded by criticizing the TCC, suggesting it "made many mistakes" and even proposing limiting individual applications to the TCC.[102]

After the non-implementation of its initial ruling, the TCC handed down a new judgment in December 2023, again finding violations of Atalay's rights and ordering his release.[103] The Court of Cassation once more refused to comply. As Atalay's conviction became final, Parliament stripped him of his mandate.[104] The TCC declared this decision "null and void" in August 2024.[105] During an extraordinary parliamentary session to address this, an MP from Atalay's party was physically attacked by a member of the presidential party.[106] The TCC's decisions have since been completely ignored and Atalay remains in prison.

The examples discussed, including that of Can Atalay, highlight the intensifying political pressure and backlash against the TCC in cases where it has reached decisions concerning perceived dissidents. In a highly repressive political climate with severely eroded judicial independence, where dissent is often equated with 'terrorism' or 'betrayal of the nation', the ability of individuals to obtain redress for human rights violations through an individual application to the TCC is increasingly limited to those cases which favour the ruling parties.

Given the totality of the circumstances which raises the most serious concerns regarding the independence and effectiveness of the TCC, there is a pressing need for the EU, in its relations with Türkiye, to prioritise the strengthening of the TCC's independence and effectiveness as a remedy in cases raising politically sensitive issues. This constitutes an essential aspect of a mutual relationship founded on respect for human rights, democracy and the rule of law.

IV. Conclusion

The analyses in this submission reveal a need to focus, in the EU's engagement with Türkiye, on three fundamental issues regarding Türkiye's non-compliance with its obligations under the ECHR and judgments of the ECtHR. First, the Turkish authorities have repeatedly adopted strategies in bad faith to continue silencing perceived dissidents in Türkiye and so ~~a~~ flouting a growing number of ECtHR judgments finding serious human rights violations in such cases. Secondly, behind this defiance of the Convention standards and ECtHR judgments lies the structural erosion of judicial independence in Türkiye which has seen the judiciary effectively "captured" by the government. The consequence has been that domestic courts have acted to facilitate rather than remedy Convention violations and used detention and criminal proceedings as a means to silence individuals who express dissent or criticize the authorities. Thirdly, due to its appointment system, structural deficiencies and recent practice, the TCC is no longer an effective remedy for violations stemming from the widespread repression of human rights defenders, opposition politicians, and others engaged in politically disfavoured expression. Together, these issues pose a significant threat not only to human rights protections within Türkiye but also in Europe as a whole, jeopardising the integrity of the CoE system and setting a dangerous precedent for other States. Without decisive and unified action by EU institutions and Member States, Türkiye risks moving even further from democracy and constructive relations with the EU, centred around a shared commitment to human rights and the rule of law. Likewise, the EU's credibility and cohesion as a project underpinned by the promotion of rule of law and human rights values risks

[101] See https://www.bbc.com/turkce/articles/c72q6d5d9j2o.
[102] See https://www.aljazeera.com/news/2023/11/10/erdogan-criticises-top-turkey-court-stoking-judicial-crisis.
[103] TCC, *Can Atalay (3)* [Plenary Assembly], App. no. 2023/99744, 21 December 2023 (https://kararlarbilgibankasi.anayasa.gov.tr/BB/2023/99744).
[104] https://www.reuters.com/world/middle-east/turkish-parliament-strips-status-opposition-mp-after-judicial-clash-2024-01-30/.
[105] https://bianet.org/haber/constitutional-court-declares-revocation-of-can-atalays-mp-status-null-and-void-298121.
[106] See https://edition.cnn.com/2024/08/17/middleeast/turkey-parliament-fist-fight-intl/index.html; https://www.milliyet.com.tr/gundem/mhp-lideri-bahceli-can-atalay-konusu-tamamiyla-kapandi-7173328.

suffering significant damage, amidst a rapidly changing and highly uncertain global context.

V. Recommendations:

To the European Commission, EU Member States, and the European External Action Service

1. Make compliance with Türkiye's human rights obligations, including implementation of ECtHR judgments, a key priority in shaping stable, secure and sustainable EU-Türkiye relations and place it, along with demands for judicial reform, at the heart of political and economic cooperation and dialogue between the EU and Türkiye.
2. Issue unequivocal public statements denouncing the hollowing out of the right to political association, participation and representation in Türkiye as well as the associated crackdown on lawyers, independent media, civil society and the right to freedom of peaceful assembly in Türkiye. Such statements should clearly signal that the deteriorating human rights situation will hamper relations based on shared values and mutual interests.
3. Use all opportunities including high-level engagements, meetings, and negotiations to stress, both publicly and directly with the authorities, that the EU expects a reversal of negative rule of law and human rights trends, including ending misuse of criminal law and widespread arbitrary detentions, and non-implementation of ECtHR judgments, and ensuring judicial independence.
4. Reiterate that human rights are a non-negotiable and integral part of the EU's relations with Türkiye and that therefore tangible human rights improvements are essential to deepening bilateral trade and investment, including the modernisation of the EU-Türkiye Customs Union.
5. At high-level opportunities, publicly insist on Türkiye's full implementation of ECtHR judgments, particularly in the cases of Selahattin Demirtaş, Figen Yüksekdağ Şenoğlu and Osman Kavala, and on their immediate and unconditional release and full restoration of their rights, as well as that of other arbitrarily detained civic activists, lawyers, journalists, and human rights defenders, including dropping pending charges as well as vacating any convictions against them and fully restoring their civil and political rights.
6. Use all effective diplomatic and political channels to secure implementation of leading ECtHR judgments, including *Kavala* (28749/18); *Selahattin Demirtaş (No. 2)* (14305/17) and *Yüksekdağ Şenoğlu and Others* (14332/17); *Öner and Türk* (51962/12), *Işıkırık* (41226/09), *Artun and Güvener* (75510/01), *Altuğ Taner Akçam* (27520/07), and *Nedim Şener group* (38270/11); *Oya Ataman* group (74552/01); *Yüksel Yalçınkaya* (15669/20); *Alparslan Altan* group (12778/17) and *Akgün* (19699/18); *Gurban* group (4947/04); and *Piskin* (33399/18), imposing clear consequences for non-compliance.
7. Encourage Türkiye to provide a concrete action plan to resolve systemic deficiencies and demonstrate compliance with human rights standards, implement the ECtHR judgments, and adopt reforms of the CJP and ensure judicial independence more broadly, in line with Venice Commission and other human rights bodies' and organisations' key recommendations. Provide technical assistance to implement the necessary constitutional and legislative reforms.
8. Collaborate with regional and international organizations such as the CoE and UN and their human rights institutions and mechanisms with a view to pressing Türkiye to adhere to its human rights obligations and raise these issues during international human rights reviews. Maintain strong focus on Türkiye in the EU's statement on Human Rights situations that demand the Council's attention (item 4) at the UN Human Rights Council.
9. Ensure the EU delegation and member state missions in Türkiye step up their monitoring of trials of groups and individuals facing prosecution for peacefully exercising their right to freedom of expression and peaceful assembly.

10. Increase support to civil society and the independent legal profession in Türkiye, including through increased and sustained funding for those advocating for judicial independence and rule of law, monitoring compliance and disseminating information about violations; and more robust political support to human rights defenders and other actors facing unjust prosecution, restrictive legislation and closure proceedings.

To the European Parliament

1. Adopt robust resolutions and issue regular public statements condemning Türkiye's continuing political repression and strategies to evade its human rights obligations and demanding that Türkiye implement judicial and legislative reforms and comply with ECtHR judgments, including amending Constitutions and laws governing the CJP in line with the Venice Commission's opinions and recommendations.
2. Call on the European Commission, the European Council and the European External Action Service to make implementation of ECtHR judgments and judicial reform a priority in the EU's relations and engagement with Türkiye.
3. Plan a mission to Türkiye to raise political attention to politically motivated or charged detentions and prosecution and the situation of civil society and the legal profession.
4. Regularly engage and consult with stakeholders, including civil society, on Türkiye's non-compliance with ECtHR judgments, providing visibility to their plight on international platform.