IN THE EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

Application No. 2170/24

BETWEEN:

OSMAN KAVALA (No. 2)
Applicant

- and –

TÜRKİYE
Respondent

- and -

Turkey Human Rights Litigation Support Project
Human Rights Watch
International Commission of Jurists
Interveners

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS

I. Introduction

1. The Third-Party Interveners ('the Interveners') submit these comments by leave of the President of the Second Section of the Court granted on 14 August 2024 under Rule 44(3) of the Rules of Court and maintained for the purposes of the proceedings before the Grand Chamber. The present case concerns the continued detention of Osman Kavala following the European Court of Human Rights' ('the Court' or 'the ECtHR') judgment of 10 December 2019 (*Kavala v. Turkey*, no. 28749/18, 10 December 2019) and the subsequent criminal proceedings which resulted in a sentence of aggravated life imprisonment. Mr Kavala's conviction became final on 28 September 2023, despite the ECtHR's 2019 judgment and its landmark ruling of 11 July 2022 (hereinafter 'Kavala Grand Chamber Judgment') under the highly exceptional infringement proceedings which found Türkiye in violation of Article 46(1) of the European Convention on Human Rights ('the Convention').[1]

2. On 16 September 2024, the Interveners submitted a third-party intervention to the Chamber highlighting important systemic issues underpinning the proceedings against Mr. Kavala, drawing on their expertise as organisations specialising in international human rights law and working extensively on human rights and the judicial process in Türkiye. Following the Chamber's relinquishment of its jurisdiction in favour of the Grand Chamber on 25 November 2025, the Interveners are submitting an updated intervention, integrating key developments after September 2024 in relation to the following issues arising in this case: first, the erosion of judicial independence and impartiality in Türkiye (Section II), which bears directly on the Court's determinations under Articles 5, 6, 7, 10, 11, 18, and 35(1) of the Convention, as well as Article 46(1); second, the ineffectiveness of the Constitutional Court ('the TCC') in providing remedies in politically sensitive cases, in particular those involving perceived dissidents (Section III); and third, Türkiye's practices aiming to circumvent the implementation of the ECtHR's judgments (Section IV). The relevant developments indicate that these trends have become further entrenched and form part of the broader systemic context that is directly pertinent to the Grand Chamber's examination of the issues arising under the Convention in the present case.

II. Capture and instrumentalisation of the judiciary in Türkiye

3. As a general principle of law recognised by the international community, judicial independence and impartiality, enshrined in the Convention (Article 6) and in Türkiye's Constitution (Articles 9 and 138), is an integral part of the rule of law. 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.[2] It requires freedom from external and internal undue pressure and influence,[3] as well as the appearance of impartiality.[4] Judicial independence and impartiality is essential for the effective investigation, prosecution and, where appropriate, punishment of certain grave human rights violations,[5] and the protection of the full array of Convention rights.

4. The degradation of the independence and impartiality of the judiciary in Türkiye has occurred over a long

[1] ECtHR, *Proceedings Under Article 46 § 4, in the Case of Kavala v. Türkiye* (28749/18), paras. 143-145, 151, 161-162.
[2] 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.
[3] 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.
[4] See e.g. ECtHR, *Campbell and Fell v. the United Kingdom*, App nos 7819/77 and 7878/77, 28 June 2014, para. 78.
[5] 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.

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 a broader assumption of effective control over State institutions over the past decade and a half.[6] This capture has been enabled by the weakening or removal of key legal and constitutional safeguards, leading to spurious and politically motivated criminal and disciplinary proceedings against, and arbitrary arrest and dismissal of, thousands of judges and prosecutors.[7] Political interference in and instrumentalisation of the judiciary against human rights defenders and others perceived as obstacles to the coalition parties has become rampant and systematic.[8] This is evidenced by a resurgence, over the past year, of mass arrests and arbitrary detentions – reminiscent of practices following the Gezi protests and during the State of Emergency – as well as continued misuse of anti-terrorism and national security laws,[9] persistent non-implementation of relevant ECtHR judgments,[10] and rising misuse of the sentence execution regime to arbitrarily and indefinitely prolong political prisoners' detention.[11]

5. The first fundamental deficiency concerning judicial independence is the composition and functioning of the Council of Judges and Prosecutors (CJP). As the main self-governing body of the judiciary, the CJP is meant to constitute "one of the most crucial guarantees of judicial independence" and a key institution, alongside the TCC, in the protection of the rule of law.[12] It should protect members of the judiciary from arbitrariness by legislative and executive powers.[13] However, amendments to the Turkish Constitution adopted by the Grand National Assembly ('Parliament') – confirmed in a 2017 referendum – radically altered the composition and selection procedure of the CJP (Article 159 of the Constitution).[14] The number of CJP members was virtually halved. Almost half of the CJP members had previously been elected by the judiciary (10/22), in line with European standards prescribing that at least a significant portion of judicial council members should be judges elected by their peers.[15] Under the new system, appointments are made only by the President (4/13), filled by *ex officio* government officials (2/13), or through election by Parliament (7/13). International human rights bodies, including the European Court, have expressed serious concerns regarding these changes and their impact on the CJP's independence.[16]

---

[6] International Commission of Jurist (ICJ), 'Turkey: the Judicial System in Peril: A briefing paper' (2016), p. 10; Transparency International, 'Examining State Capture: Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey', p 6.

[7] Rule 9.2 submission by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists concerning the case of Kavala v. Türkiye (Application No. 28749/18), 26 January 2024, paras. 26-42.

[8] Rule 9.2 submission by TLSP, HRW and the ICJ concerning the case of *Kavala v. Türkiye* (Application No. 28749/18), 26 May 2025, paras. 18-26; European Parliament resolution of 7 May 2025 on the 2023 and 2024 Commission reports on Türkiye (2025/2023(INI)), para. 8.

[9] See https://www.ohchr.org/en/press-releases/2025/01/turkiye-expert-dismayed-continued-misuse-counter-terrorism-law-keep-human

[10] HRW, ICJ and TLSP, "Flouting the European Court of Human Rights and Bringing Domestic Courts to Heel: Türkiye's Collision Course with the Council of Europe" (January 2025).

[11] See Association of Lawyers for Freedom (Özgürlük İçin Hukukçular Derneği, ÖHD), Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı, TOHAV) Media and Law Studies Association (Medya ve Hukuk Araştırmaları Vakfı, MLSA), and The World Organization against Torture (OMCT), Joint Alternative Report to the Committee against Torture in relation to its review of the fifth periodic Report of Türkiye, June 2024, pp. 34-35. Note that the Intervenors use the term "political prisoners" within the meaning of Resolution 1900 (2012) of the Parliamentary Assembly of the Council of Europe (PACE) on the definition of political prisoner (3 October 2012).

[12] Consultative Council of European Judges (CCJE), Opinion no.10(2007) on the Council for the Judiciary at the service of society, para. 8; Fahri Bakırcı, 'On the Election of Members to the Council of Judges and Prosecutors and the Constitutional Court in Ensuring Independence of the Judiciary', 15 December 2021, DergiPark, p 4.

[13] 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.

[14] "High Council of Judges and Prosecutors" prior to 2017.

[15] 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.

[16] 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. See also ECtHR,

In an Opinion of December 2024, the European Commission of Democracy through Law ('Venice Commission') confirmed that the composition and functioning of the CJP deprive that body of independence from the Government and has enabled its effective politicisation.[17]

6. The CJP's composition and the election of its members in practice since 2017 provide clear indicia validating these concerns, including key roles being attributed to judges and prosecutors close to the Government and/or with a track record of misuse of anti-terrorism and national security laws against perceived government critics and opposition figures as well as non-implementation of TCC and ECtHR judgments.[18] Furthermore, the election of 7 CJP members by Parliament has served to undermine the independence of those members from the ruling AKP/MHP coalition, inevitably following a party-logic.[19] In practice, the election process has been politicised and breached constitutional safeguards.[20] The May 2025 elections of CJP members in Parliament generated considerable controversy and were contested before the TCC for not following the procedure guaranteed by the Constitution.[21] However, the TCC declared itself incompetent to examine the case.[22] One of the members elected during this process was known to be a member of the Court of Cassation who refused to implement the Constitutional Court judgment in the case of detained opposition MP Can Atalay,[23] and has been reported to have close ties with members of the ruling political coalition.[24] In addition, the most recent Parliamentary vote resulted in the re-election of a CJP member who has been directly affiliated with the ruling party AKP.[25]

7. Rather than serving as a safeguard for judicial independence, the CJP has become a mechanism for

---

Selahattin Demirtaş v Turkey (no.2), App no. 14305/17, 22 December 2020, para. 434; *Yüksekdağ Şenoğlu and others,* App no. 14332/17 and 12 others, 8 November 2022, paras. 637-638.

[17] 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. In its decision of March 2025 concerning the implementation of *Kavala v Türkiye* (Application No. 28749/18)*,* the Committee of Ministers emphasised the "ongoing nature of the shortcomings of the current structure of the Council of Judges and Prosecutors, including their effect on the judiciary" and invited domestic authorities to implement the Venice Commission's recommendations (https://hudoc.exec.coe.int/ENG?i=CM/Del/Dec(2025)1531/H46-38E).

[18] Several current or previous CJP members have previously worked for the AKP or held government positions (see https://www.hsk.gov.tr/havvanur-yurtsever and https://www.birgun.net/haber/hsk-nin-yeni-uyesi-havvanur-yurtsever-oldu-366938; https://www.yeniakit.com.tr/haber/bilal-temel-kimdir-hsk-uyesi-bilal-temel-nereli-kac-yasinda-1542754.html). The Deputy President of the CJP and President of its Second Chamber since May 2025 has previously been in charge of presiding over the prosecution of "terrorism"-related offences at the Istanbul courthouse and led operations against alleged members of the Gülen organisation (https://www.hsk.gov.tr/fuzuli-aydogdu ; https://medyascope.tv/2025/05/21/hsknin-yeni-uyeleri-kimler/). The role of Deputy Minister of Justice has similarly been instrumentalised. Between 2022 and 2024, Judge A. G., former Chair of the judicial formation 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 in the case of opposition MP Kadri Enis Berberoğlu, was Deputy Minister of Justice. The Deputy Justice Minister since 2024 is Mehmet Yılmaz, previously responsible for leading the prosecution of "terrorism"-related cases (https://www.sabah.com.tr/gundem/2024/06/07/istanbul-adliyesi-bassavci-vekili-mehmet-yilmaza-veda-etti).

[19] Venice Commission, Türkiye, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (supra note 17), para. 33.

[20] In 2017, opposition parties' refusal to participate in the selection of candidates led the ruling political coalition to nominate all candidates. In 2021, nominations were politically negotiated through a "quota" system between parties, which excluded the HDP and bypassed the confidential, multi-round voting system laid out in Article 159 of the Constitution. Bakırcı argues that the intention was to limit the number of members of the CJP that the opposition had a chance of appointing, while at the same time avoiding a risk of annulment linked to unilateral rejection of the drawing method laid out in the Constitution (See Bakırcı (*supra* note 12).

[21] See https://oad.org.tr/blog/anayasa-mahkemesinin-hsk-uyelik-secimine-iliskin-karari-uzerine/

[22] https://www.anayasa.gov.tr/tr/haberler/norm-denetimi-basin-duyurulari/h%C3%A2kimler-ve-savcilar-kurulu-uyeligi-secimlerine-dair-turkiye-buyuk-millet-meclisi-kararinin-iptali-talebine-iliskin-karar/#:~:text=Anayasa%20Mahkemesi%2022%2F7%2F2025,g%C3%B6revsizlik%20nedeniyle%20reddine%20karar%20vermi%C5%9Ftir

[23] See below.

[24] https://medyascope.tv/2025/05/21/hsknin-yeni-uyeleri-kimler/

[25] https://sonhaber.ch/akpli-gecmisiyle-bilinen-havvanur-yurtsever-yeniden-hsk-uyesi-oldu/

consolidating undue influence over the judiciary, contributing to a "climate of fear and submission" among judges and prosecutors.[26] Established standards reflected in the Court's jurisprudence on judicial independence require decisions affecting the career of judges and prosecutors to be based on objective criteria and a transparent process.[27] However, the CJP's powers related to disciplinary proceedings, transfers, 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 improper purpose of furthering the political interests of the ruling coalition.[28] Examples include the CJP's interference in the case of Osman Kavala[29] and recent measures in relation to the widened Gezi Park prosecutions,[30] in the criminal proceedings involving opposition politician Ekrem Imamoğlu,[31] and in proceedings relating to the conditional release of unjustly convicted human rights lawyer Selçuk Kozağaçlı.[32] Strikingly, the crackdown on the opposition party CHP and the widened Gezi investigations have both been led by the freshly appointed Istanbul Public Prosecutor, known for his involvement as prosecutor or judge in various courts in the prosecution and conviction of perceived dissenters.[33]

8. The recruitment system for judges and prosecutors is also non-compliant 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.[34] 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.[35]

---

[26] Venice Commission, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (2024) (supra note 17), para. 35.
[27] See e.g. ECtHR, *Bilgen v Turkey,* no. 1571/07, 9 March 2021, para. 63.
[28] 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.
[29] 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/).
[30] A disciplinary investigation was initiated against a judge who ordered the release of Ayşe Barım, a talent agent and leading figure of the Turkish cinema industry detained as part of the widened Gezi Park investigation (see further TLSP, HRW and the ICJ, Rule 9.2 submission of 26 May 2025 on *Kavala v. Türkiye* (supra note 8), para. 23).
[31] 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); a judge who voted to acquit him in the defamation proceedings brought by Istanbul Public Prosecutor A.G. was reassigned from the Assize Court to a labour court (https://t24.com.tr/haber/akin-gurlek-davasinda-imamoglu-nun-tum-suclamalardan-beraat-etmesi-yonunde-oy-kullanan-hakim-mehmet-can-kozan-in-gorev-yeri-degistirildi,1254386); another judge who acquitted Imamoğlu in a separate criminal case (concerning other fraud allegations) was transferred to Kahramanmaraş (https://www.birgun.net/haber/imamogluna-beraat-veren-hakim-marasa-atanmis-673034); and a judge who previously convicted Imamoğlu in another case was appointed to the appellate panel hearing the case concerning other fraud allegation, in which he had been acquitted (https://www.cumhuriyet.com.tr/siyaset/ekrem-imamoglu-nun-beraat-ettigi-ihale-davasina-yapilan-atama-dikkat-cekti-dosyaya-o-hakim-geldi-2461778).
[32] The Bakırköy Public Prosecutor who objected to his conditional release in April 2025, leading to the overturning of a decision to release him despite his eligibility for conditional release (https://www.bbc.com/turkce/articles/cgkgnl3exnno), was appointed prosecutor to the Supreme Court in October 2025 (https://t24.com.tr/haber/hsk-dan-istanbul-kararnamesi-gurlek-e-yakin-isimler-kritik-gorevlere-atandi,1265338).
[33] TLSP, HRW and the ICJ, Rule 9.2 submission of 26 May 2025 on *Kavala v. Türkiye* (supra note 8), paras. 22-23.
[34] Law No. 2802 on Judges and Prosecutors, Article 9A.
[35] See statements of former Istanbul Bar Association President Mehmet Durakoğlu (https://www.gazeteduvar.com.tr/yargida-torpil-iddiasi-cok-uzun-yillardir-isliyor-haber-1508357) and former Court of Cassation prosecutor Ömer Faruk Eminağaoğlu (https://www.gercekgundem.com/guncel/mulakatlarda-torpil-iddiasi-akpnin-yargidaki-kadrolasmasinin-temeli-mulakatlar-402250). 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 (https://www.diken.com.tr/chpli-yarkadas-hakim-savci-atanan-akplileri-acikladi-113-kisilik-liste/).

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 and following a political agenda.[36] Although the minimum score was later reinstated, a large number of judges were recruited in this way to replace arbitrarily dismissed or detained judges.

9. 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, in 2024, President Erdoğan referred to judges and prosecutors dismissed after the coup attempt as "flies" of "the FETÖ swamp" and criticised the Council of State's decision to reinstate 387 of them, following which Minister of Justice Yılmaz Tunç announced that the Council of State decision would be re-examined by the CJP.[37] Moreover, public statements by leading officials reveal outright resistance to international human rights bodies' binding judgments and recommendations addressing the erosion of judicial independence.[38]

10. In the context of rule of law concerns in Poland, the ECtHR affirmed that the main objective of reforms depriving Poland's judiciary of the right to nominate and elect judicial members of the national judicial council – in "non-compliance with the principle of the separation of powers and the independence of the judiciary" – was to give the executive and legislature a decisive influence on the council's composition, which in turn allowed these powers to interfere with appointments of judges by the council and impaired "the very essence" of the right to a tribunal established by law.[39] The current judicial system in Türkiye similarly allows the government and Parliament to determine the appointment and career of judges and prosecutors through decisive influence over the CJP's composition These conditions fly in the face of the safeguards required for an independent judiciary and enable the ruling coalition to exercise a decisive influence over the entire judicial system.

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

11. 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".[40] 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.[41] Additionally, a domestic remedy cannot be considered effective if it lacks minimum guarantees of promptness[42] or if the State fails to ensure its implementation when

[36] Candidates who performed well on the written test reported interviews of no more than two or three minutes with no substantial questions: 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.

[37] https://www.ensonhaber.com/gundem/adalet-bakani-yilmaz-tunc-danistayin-fetoculere-yonelik-karariyla-ilgili-konustu

[38] Erdoğan's chief advisor has recently described criticisms of the Undersecretary of Justice's membership of the CJP as "elitist, illegitimate, and anti-democratic", observing that "international regulations and decisions are secondary" and the judiciary must depend on "the will of the people" (https://www.cumhuriyet.com.tr/siyaset/mehmet-ucum-dan-akin-gurlek-tartismalarina-yanit-bilerek-carpitmak-2451114).

[39] ECtHR, *Reczkowicz v. Poland*, App no. 43447/19, 22 July 2021, paras. 266-277; ECtHR, *Juszczyszyn v. Poland*, no. 35599/20, 6 October 2022.

[40] ECtHR, *Csüllög v. Hungary*, App no. 30042/08, 7 June 2011, para. 46.

[41] ECtHR, *Akdivar and Others v. Turkey,* App no. 21893/93, 16 September 1996, para. 69

[42] ECtHR, *Kadiķis v. Latvia (no. 2)*, App no. 62393/004, 4 May 2006, para. 62.

granted.[43] Given these criteria, several issues in Türkiye cast serious doubt on whether the individual application procedure to the TCC serves as an effective remedy in cases of detention, especially in the context of politically disfavoured activities.

12. 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.[44] Five members currently appointed by President Erdoğan have previously held government positions: one was chief advisor to the President;[45] two are former Deputy Ministers of Justice (who were *ex officio* members of the CJP), one of whom also served as an AKP MP;[46] one was a former official in the Ministry of Justice;[47] and one was a former Director of Presidential Administrative Affairs.[48] Additionally, two of the three members elected by Parliament have also been affiliated with the government or the ruling party.[49] Furthermore, two of the TCC members appointed by the President are from the Court of Cassation and two from the Council of State. Through its control over the CJP, which elects the members of both courts, the executive can thus strategically promote certain judges to the top courts and then to the TCC.[50]

13. Second, the lack of independence of the TCC has resulted in a lack of impartial oversight of, and effectiveness in ensuring, human rights guarantees in relation to perceived dissidents.[51] Thus, despite the ECtHR's rare finding of a violation of Article 18 ECHR due to the arbitrary detention of Osman Kavala, the TCC failed to find that his continued detention violated his rights.[52] More recently, the TCC similarly found no violation of prominent human rights defender Şebnem Korur Fincancı's right to liberty and security regarding her detention for her professional assessment of reported human rights abuses by Türkiye's armed forces,[53] in clear contravention of the ECtHR's well-established case-law.[54] The TCC has repeatedly failed to find violations in cases relating to arbitrary detention and ill-treatment, torture or unlawful death of alleged "members of terrorist organisations" in detention.[55] It has arbitrarily denied requests for

[43] 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.
[44] Venice Commission Opinion No. 875/2017 (*supra* note 16), para. 94; Bakırcı (*supra* note 12) pp. 54-55.
[45] https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/doc-dr-recai-akyel/
[46] https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/yildiz-seferinoglu/
https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/selahaddin-mentes/
[47] https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/baskanvekilleri/basri-bagci/
[48] https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/doc-dr-metin-kiratli/
[49] See https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/muhterem-ince/; https://www.dw.com/tr/aym-%C3%BCyeli%C4%9Fine-kenan-ya%C5%9Far-se%C3%A7ildi/a-60487408
[50] For instance, Mr. İ. F. , who was involved in the prosecution of several politically charged criminal cases (including Gezi Park case), was appointed to the TCC after just 20 days of tenure at the Court of Cassation- an unprecedentedly short tenure (Communication of 26 January 2024 by NGOs in *Kavala v. Türkiye* (*supra* note 7), para. 36; https://www.anayasa.gen.tr/irfan-fidan-olayi.htm). See also Venice Commission Opinion No. 875/2017 (*supra* note 16), para. 121.
[51] See Bakırcı (*supra* note 12) p. 61.
[52] TCC, *Mehmet Osman Kavala (2)*, App no. 2020/13893, 29 December 2020, https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/13893. 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 Mr. 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 (ECtHR, *Alparslan Altan v Turkey,* App no. 12778/17, 16 April 2019, para. 138). The TCC, in a later judgment, explicitly refused to implement the ECtHR's judgments concerning the pre-trial detention of judicial officers including Mr. Altan (TCC, *Yıldırım Turan*, App no. 2017/10536, Inadmissibility decision of 4 June 2020).
[53] TCC, *Rasime Şebnem Korur,* App no 2022/105315, Judgment of 12 June 2025. See Front Line Defenders, Sebnem Korur Fincanci (https://www.frontlinedefenders.org/en/profile/sebnem-korur-fincanci).
[54] See eg ECtHR, *Selahattin Demirtaş (no. 2) v. Turkey* [GC], Application no. 14305/17, 22 December 2020, paras. 314-318. The Dissenting Opinion to the TCC judgment in Ms. Fincancı's case (supra) highlights that "[her] arrest warrant contains no assessment showing how the applicant's speech legitimized, praised, or encouraged the use of coercive, violent, or threatening methods by a terrorist organization." (para. 15).
[55] In the context of alleged members of the Gülen organisation, see Justice Square, Turkish Prisons Report (2016-2024), pp. 44-60.

release from detention of political prisoners with serious health issues.[56] Beyond non-violation findings, the TCC often interprets its jurisdiction exceedingly restrictively to avoid ruling on issues of strategic interest to the ruling coalition.[57]

14. The TCC's approach consists of a strategic combination of rights-compliant and non-compliant decisions, depending on the political sensitivity and timing of the issue, government policies and priorities, and the judicial formation hearing the case.[58] 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 ECHR in relation to the use of ByLock as criminal evidence[59] and ordered that Türkiye undertake general measures under Article 46. Yet, the President of the TCC expressed disagreement, stating "ultimately, the courts in Türkiye will make the decision".[60] In several cases, the TCC has failed to comply with the ECtHR judgments[61] or has ruled that it lacks jurisdiction *rationae materiae* to review lower courts' refusal to grant affected persons a retrial following the ECtHR's judgment.[62] The court has also been delaying rulings on related cases, seemingly as a means to avoid implementing *Yalçınkaya*.[63]

15. Third, the TCC's lack of a transparent prioritisation policy contributes to its selectivity and facilitates interference with its independence. The ECtHR has stressed that justifications relating to the TCC's workload could not "eternally justify extremely lengthy delays" in its review of applications.[64] Yet, while some cases are concluded quickly, others, particularly those involving politically sensitive issues or government critics, face unreasonable delays, precluding an effective remedy. For instance, applications concerning the suspension of MPs' mandates were decided only after the mandate lapsed or the MP was barred from running for office due to a terrorism-related conviction.[65] Similarly, applications brought to the TCC for the annulment of presidential decrees remain pending for an average of more than two

[56] See for instance the case of detained opposition politician Murat Çalik, mayor of the Beylikdüzü province of Istanbul, https://www.cumhuriyet.com.tr/turkiye/aym-den-tahliye-talebine-ret-karari-murat-calik-in-avukatlarindan-aciklama-2434242 .
[57] Although Article 159 of the Constitution explicitly regulates the CJP's appointment, the TCC held that alleged irregularities in the procedure for 2025 CJP elections amounted to a 'parliamentary decision' exempt from judicial review, departing from its established case-law, and dismissed the case on the grounds of "lack of competence" (Case file no. 2025/133, Decision no. 2025/159 of 22 July 2025) (see https://oad.org.tr/blog/anayasa-mahkemesinin-hsk-uyelik-secimine-iliskin-karari-uzerine/). In *Yıldırım Turan*, the TCC rejected the ECtHR's finding in *Alparslan Altan v Turkey* and *Baş v Turkey,* finding the application inadmissible as manifestly ill-founded (TCC, *Yıldırım Turan*, App no. 2017/10536, Inadmissibility decision of 4 June 2020, para. 119; 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).
[58] Bertil Emrah Oder, 'The Resistance-Deference Paradox', 28 September 2022, https://verfassungsblog.de/the-resistance-deference-paradox/.
[59] ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, 26 September 2023.
[60] https://www.gazeteduvar.com.tr/anayasa-mahkemesi-baskani-arslan-aihm-kararina-biz-katilmiyoruz-haber-1640350
[61] 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*). In recent decisions, the TCC found that using ByLock usagge to justify dismissal of two prosecutors had not violated their right to respect for private life (https://www.anayasa.gov.tr/tr/haberler/bireysel-basvuru-basin-duyurulari/fetopdy-ile-iltisaklari-ve-irtibatlari-olduklari-degerlendirilerek-meslekten-cikarilmalari-nedeniyle-yapilan-basvurulara-iliskin-kararlar/).
[62] See TCC, *Fatih Dilbaz,* App no. 2024/11, Judgment of 17 April 2025.
[63] https://medyascope.tv/2024/07/15/rusen-cakirin-konugu-kerem-altiparmak-yuksel-yalcinkayanin-bylock-davasi-aihm-tarihinin-en-buyuk-buzdagi/ .
[64] *Selahattin Demirtaş (no. 4) v Turkey,* App no. 13609/20, 8 July 2025, para. 152; ECtHR, *Kavala v. Turkey* (Application no. 28749/18), 10 December 2019, para. 188.
[65] 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. The application lodged by Selahattin Demirtaş in November 2019 remains pending.; A TCC application lodged by journalist Murat Aksoy in 2018 concerning his conviction for alleged "support for a terrorist organisation" was ruled on only in 2025, when the TCC found a violation of his right to freedom of expression (TCC, *Murat Aksoy (2),* App no. 2018/35195, Judgment of 29 April 2025).

years,[66] allowing unlawful decrees to remain in effect for sufficient time to produce their intended effects. Applications resulting in violation findings tend to remain pending for significantly longer than other applications,[67] evidencing the tactical nature of such delays.

16. Fourth, 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. Notable examples of non-implementation include a pilot judgment requiring Parliament to amend overbroad anti-terrorism legislation,[68] judgments requiring lower courts to suspend criminal proceedings against MPs with parliamentary immunity,[69] as well as courts' recent refusal to release Gezi Park defendant Tayfun Kahraman despite a TCC ruling in his favour.[70]

17. Recent proceedings concerning Mr. Kavala's co-defendants in the Gezi Park trial epitomise critical challenges to the effectiveness of the TCC and provide a deeply concerning example of the intensifying political pressure and backlash against the TCC in cases where it reaches favourable decisions concerning perceived dissidents. The Court of Cassation, which upheld the conviction and 18-year sentence of detained opposition MP Can Atalay, openly refused to comply with multiple TCC rulings finding violations of his rights on the basis of his parliamentary immunity and ordering his release from detention and his retrial.[71] It also took the unprecedented step of seeking a criminal investigation against the TCC members,[72] while President Erdoğan publicly attacked the TCC and proposed limiting individual applications to the TCC.[73] During an extraordinary parliamentary session to address the issue of Mr Atalay's immunity, an MP from Mr Atalay's party was physically attacked by a member of the President's party.[74] Subsequently, domestic courts similarly refused to release co-defendant Tayfun Kahraman despite a TCC ruling in his favour.[75]

18. 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 align with the ruling parties' interests. Given the totality of the circumstances, which raise the most serious concerns regarding the independence and effectiveness of the TCC, there appears to be a pressing need to reconsider the ECtHR's previous presumption that the TCC remains an effective remedy in cases raising politically sensitive issues.

IV. Türkiye's practices to evade Convention obligations and circumvent the implementation of the Court's judgments

19. The abuse of criminal proceedings by numerous Turkish judicial authorities, including through

[66] Ahmet Ayata, Stages and Durations in The Decisions of the Constitutional Court: An Evaluation Centered on Presidential Decrees, Necmettin Erbakan University Law Faculty Review, 7(3), pp. 588-603, p. 602.
[67] ibid.
[68] TCC, *Hamit Yakut,* App no. 2014/6548, 10 June 2021. https://www.amnesty.org/en/wp-content/uploads/2024/03/EUR4477652024ENGLISH.pdf ; https://bianet.org/haber/aym-ayni-maddeyi-ikinci-kez-iptal-etti-duzenleme-bir-oncekiyle-ayni-303476
[69] See TCC, *Kadri Enis Berberoğlu (2),* App no. 2018/30030, 17 September 2020 ; *Kadri Enis Berberoğlu (3)*, App no. 2020/32949, 21 January 2021.
[70] TCC, *Tayfun Kahraman* [Plenary Assembly], App no. 2023/98215, 31 July 2025; https://bianet.org/haber/courts-refuse-to-release-gezi-park-convict-tayfun-kahraman-despite-top-court-ruling-313513#google_vignette
[71] See further Human Rights Watch, International Commission of Jurists, Turkey Human Rights Litigation Support Project, "Flouting the European Court of Human Rights and Bringing Domestic Courts to Heel: Türkiye's Collision Course with the Council of Europe" (January 2025), pp. 11-12.
[72] See https://www.bbc.com/turkce/articles/c72q6d5d9j2o.
[73] See https://www.aljazeera.com/news/2023/11/10/erdogan-criticises-top-turkey-court-stoking-judicial-crisis.
[74] 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.
[75] TCC, *Tayfun Kahraman* [Plenary Assembly], App no. 2023/98215, 31 July 2025.

unreasonable interpretation of provisions of criminal law and concomitant disregard for core procedural rights and the ECHR reveals a persistent defiance towards the ECtHR's judgments and standards in its case-law.[76] According to the Department for the Execution of Judgments, Türkiye has a staggering 145 leading ECtHR judgments, along with 316 repetitive cases, still pending implementation.[77] Türkiye has the highest number of leading cases pending implementation among 46 CoE member states, accounting for 31.5% of the leading judgments ruled against it.[78] The Committee of Ministers' supervision of Türkiye's systemic non-implementation of ECtHR judgments reveals recurring practices aimed at avoiding discharge of its Convention obligations, particularly in politically sensitive cases. These practices include: (i) judicial authorities' actions aimed at circumventing national or ECtHR judgments or hindering effective legal protection; (ii) actions by government authorities that, while superficially cooperative in a procedural sense, impede the proper implementation of the ECtHR judgments; and (iii) practices reflecting overt non-compliance.

20. As regards the first category, the Turkish authorities frequently initiate overlapping criminal charges and proceedings based on the same or similar factual and legal grounds. This tactic has been well-documented in *Atilla Taş v. Turkey, Kavala v. Turkey*, *Selahattin Demirtaş v. Turkey (no. 2), and Figen Yüksekdağ and others v. Türkiye*, where judicial authorities reclassified substantially the same facts as new 'crimes' to justify ongoing detention.[79] Judicial authorities also issue release orders that are not executed as other arrest and detention orders are placed simultaneously.[80] This represents discreet but systematic efforts by the judicial authorities to hinder access to justice.[81] The government, meanwhile, uses these tactics to bolster its narrative against perceived dissidents and legitimise 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 individuals from securing effective protection of the law and the opportunity for release.[82] In *Demirtaş (no. 4)*, the ECtHR confirmed the existence of a "general context of repression targeting groups opposed to the official policy in Türkiye and consisting in the requalification of substantially identical facts into new offences to justify repressive measures".[83]

21. Regarding the practices in the second category, the Turkish government typically points to "dialogue" and "cooperation" with the Council of Europe, yet the implementation actions taken have often been superficial, symbolic and ultimately hollow. There are numerous leading groups of cases against Türkiye pending implementation.[84] Although the Committee of Ministers has strongly urged the authorities to consider legislative amendments to key provisions of criminal and anti-terrorism law, the government authorities continued to refer to previous legislative amendments and maintained their position that there is no need for further action.[85] Moreover, legislative acts presented as 'judicial reforms' in the

[76] See Rule 9.2 submission of 26 January 2024 by TLSP, HRW and ICJ concerning *Kavala v. Türkiye* (supra note 7).
[77] See https://www.coe.int/en/web/execution/turkey .
[78] https://www.coe.int/en/web/execution/closed-cases .
[79] Rule 9.2 by HRW, ICJ and TLSP in the case of Kavala v. Turkey, 8 February 2021, paras. 25-26; ECtHR, *Proceedings Under Article 46 § 4, in the Case of Kavala v. Türkiye* (28749/18), paras 143-145, 151, 161-162.
[80] See the criminal proceedings against Mr. Kavala and Mr. Demirtaş.
[81] See also, Dilek Kurban, 'Authoritarian Resistance and Judicial Complicity: Turkey and the European Court of Human Rights', 35 The European Journal of International Law (2) 384.
[82] Rule 9.2 submission of ARTICLE 19, HRW, ICJ, FIDH and TLSP, in the case of *Selahattin Demirtaş v. Turkey (No. 2)* 8 February 2021, paras. 59-63.
[83] ECtHR, *Selahattin Demirtaş (no. 4) v Turkey,* App no. 13609/20, 8 July 2025, para. 315
[84] See *Öner and Türk* group (51962/12, 31 March 2015); *Işıkırık* group; *Altuğ Taner Akçam* and *Artun and Güvener* groups; *Nedim Şener* group.
[85] Committee of Minister's decision of 4-6 March 2025 concerning H46-36 Öner and Türk group (Application No. 51962/12) and other groups; Turkish government's Action Plan for *Öner and Türk* groups of 19 January 2026 submitted to the Committee of Ministers, in particular paras. 230, 253-257, 268, (see further https://hudoc.exec.coe.int/?i=004-36806).

context of addressing systemic issues have, in reality, worsened existing deficiencies in Convention compliance rather than resolving them as civil society reports reflect.[86]

22. In the third category, there has been outright refusal to comply with ECtHR rulings by both government and judicial authorities. In those cases, the government authorities have frontally challenged the ECtHR's findings and the Committee of Ministers' decisions, denying the need for reform and the existence of systemic issues.[87] 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.[88] In some instances, the President and his governing coalition have publicly attacked the ECtHR rulings or those TCC judgments in line with the Convention,[89] in flagrant disregard for the Convention system and standards.

23. The non-implementation of the ECtHR's two judgments concerning Mr. Kavala reveals a political determination to resist the ECtHR's judgments and deepen repression of perceived opponents to the regime and its members.[90] Similarly, competent authorities have resisted the release of former HDP co-chairs and MPs, Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu, in breach of their obligations under Article 46 ECHR.[91] The judicial harassment of Mr Demirtaş and Ms Yüksekdağ Şenoğlu is ongoing and the former was convicted of "insult to the President" in separate proceedings in January 2026.[92] The conviction of Yüksel Yalçınkaya[93] and new mass arrests based on the use of the messaging application ByLock[94] send a further signal of open defiance of ECtHR judgments.

V. Conclusion

24. The analyses in this submission reveal three fundamental issues that are highly relevant for the present case. Firstly, the erosion of judicial independence in Türkiye has reached a stage where domestic courts have acted to facilitate, rather than remedy, Convention violations and have been used to silence individuals who express dissent or otherwise criticize the authorities. Moreover, due to its structural deficiencies and recent practice, the TCC can no longer be regarded as an effective remedy for violations stemming from the widespread repression of human rights defenders, opposition politicians, and others engaged in politically disfavoured expression. Lastly, Turkish authorities' recurring practices also demonstrate that they have adopted strategies in bad faith to continue silencing perceived dissidents in Türkiye, despite the growing number of ECtHR judgments finding serious human rights violations in such cases.

---

[86] https://www.amnesty.org/en/wp-content/uploads/2024/03/EUR4477652024ENGLISH.pdf ; https://bianet.org/haber/aym-ayni-maddeyi-ikinci-kez-iptal-etti-duzenleme-bir-oncekiyle-ayni-303476

[87] 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.

[88] Kurban (*supra* note 81) p. 386. For example, TCC, *Yıldırım Turan*, App no. 2017/10536, 4 June 2020 (inadmissibility), §119.

[89] See supra note 73. See also 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.

[90] TLSP, HRW and the ICJ, Rule 9.2 submission of 26 May 2025 on Kavala v. Türkiye (supra note 8), paras. 18-26.

[91] 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. The Committee of Ministers' December 2025 decision (CM/Del/Dec(2025)1545/H46-42) on this group of cases emphasises authorities' persistent failure to ensure implementation.

[92] https://medyascope.tv/2026/01/06/demirtasa-yine-hapis-1-yil-5-ay-hapis-aihm-kararlari-yeniden-gundemde/ . Furthermore, on 28 January 2026, Mr. Demirtaş's lawyer was convicted of "membership of a terrorist organisation" and "terrorist propaganda" and sentenced to over 11 years' imprisonment.

[93] In September 2024, the local court hearing the retrial of Yüksel Yalçınkaya handed down the same sentence against him, despite the ECtHR ruling that the evidence used in his initial sentencing did not comply with the Convention standards.

[94] https://en.tihv.org.tr/documentation/28-january-2026-hrft-documentation-center-daily-human-rights-report/.