Joint briefing by 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

Introduction

Türkiye's systematic failure to comply with its obligations under the European Convention on Human Rights ("the Convention"), implement the binding judgments of the European Court of Human Rights ("the ECtHR" or "the Court"), and act upon the decisions and resolutions of the Committee of Ministers ("the CM") and the Parliamentary Assembly of the Council of Europe ("the PACE") have reached a critical level, posing a direct threat to the integrity of the Council of Europe ("the CoE") system. Without a decisive roadmap and concerted action by the Council's institutions and Member States to bring about swift and meaningful corrective action on the part of Türkiye, the credibility and relevance of the system risk being undermined, potentially encouraging other Member States to adopt similarly dismissive attitudes toward their commitments.

As of the end of November 2024, Türkiye had the highest number of cases pending at the ECtHR, with 22,450 applications, amounting to 36.7 percent of the Court's total caseload of 61,250.[1] Türkiye consistently ranks among the countries most frequently found in violation of human rights and fundamental freedoms protected by the Convention, including Article 5 (freedom of liberty and security), Article 6 (right to a fair trial), Article 10 (freedom of expression), and Article 11 (freedom of assembly and association).[2]

The PACE has repeatedly expressed serious concern over Türkiye's systemic human rights and rule of law challenges, reflected in numerous resolutions and recommendations, often framed under the headings of "functioning of democratic institutions" or "crackdown on political opposition and civil

[1] 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.
[2] For the 2023 statistics, see European Court of Human Rights, Violations by Article and State, January 2024.

dissent."[3] The monitoring process, reopened in 2017, remains active and underscores the gravity of the situation.[4]

Türkiye's poor record in implementing ECtHR judgments further highlights the severity of the problem. As of June 2024, 156 leading cases concerning Türkiye remained unimplemented, along with an additional 375 repetitive cases. [5] These unimplemented judgments, making Türkiye the worst performer in implementing leading cases among the 46 CoE Member States, reveal systemic issues spanning restrictions on human rights on non-legitimate grounds, including for political purposes (Article 18), violations of right to liberty and security (Article 5), freedom of expression (Article 10), freedom of assembly and association (Article 11), rights of prisoners (Article 3) and deficiencies within the justice system (Article 6).

Despite numerous decisions and interim resolutions by the CM, Türkiye has consistently failed to reform its laws, governance structures and government policies to align with Convention standards and implement the Court judgments. These include: failing to reform the structure and functioning of the Council of Judges and Prosecutors (CJP) to ensure judicial independence and impartiality; refusing to amend criminal and procedural laws that are illegitimately used to criminalize expression, suppress the right to publicly comment and protest, and arbitrarily detain individuals subjected to these proceedings; not recognizing the "right to hope" for aggravated life prisoners, who remain imprisoned until death; and undermining the rights of public service workers dismissed under the state of emergency.

In the cases that have seemingly received the most attention from the international community and media coverage, Türkiye has openly defied ECtHR orders by refusing to release from detention human rights defender Osman Kavala, and opposition politicians Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu.[6] It has failed to implement judgments concerning the arbitrary detention of judges such as Alpaslan Altan, a former member of Türkiye's Constitutional Court ("the TCC"). This includes rejecting the ECtHR's authority to determine the compatibility of detention measures with domestic law.[7] It has also rejected and failed to implement a European Court decision that found former schoolteacher Yüksel Yalçınkaya had been unlawfully convicted of "membership of an armed organization" on the basis of having an encrypted communication application on his phone.[8] This rejection occurred despite the Court's specification that thousands of similar cases (repetitive cases) would follow, requiring Türkiye to adopt general measures to address a systemic problem.[9]

Türkiye's refusal to implement the European Court's judgments came to a head in February 2022 when the CM voted to trigger the highly exceptional infringement proceedings against Türkiye for its failure to comply with the *Kavala v. Turkey* judgment ordering the release of Osman Kavala and full restoration of his rights. Used for only the second time in the CoE's history, the infringement

[3] See PACE, "The Honouring of Obligations and Commitments by Türkiye," resolution 2459(2022), adopted October 12, 2022: nohttps://pace.coe.int/pdf/8e0fe2ce58604dee138ce6cca74b52048add0ca2c96f79a964728d3ee9476919?title=Res.%202459.pdf

[4] See the PACE Monitoring Committee rapporteurs' information note following a fact-finding mission to Türkiye, June 11-14, 2024: AS/Mon (2024) 16, published September 11, 2024: https://rm.coe.int/as-mon-2024-16-information-note-the-honouring-of-obligations-and-commi/1680b19600

[5] See Council of Europe Department of Execution of Judgments fact sheet on Türkiye: https://www.coe.int/en/web/execution/turkey .

[6] 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.

[7] 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.

[8] 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

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

proceedings entailed the Committee sending the Kavala judgment back to the European Court. In July 2022, the Court issued a second ruling deeming that Türkiye had violated Article 46(1) of the Convention by failing to implement the Court's December 2019 ruling.

The vote to trigger the infringement proceedings and the second European Court judgment on the Kavala case were an important acknowledgement of Türkiye's systemic disregard for the Convention system and a step to support human rights protection in Türkiye and to uphold the international human rights framework of the CoE. To date, however, Türkiye has failed to address the violations that triggered the infringement proceedings or to attempt to improve its compliance with Convention standards or Court judgments.

This briefing to the CoE institutions addresses some of the main elements underlying Türkiye's systemic failure to implement the ECtHR judgments, which not only perpetuates ongoing Convention violations, but also serves to increase applications to the Court, and positions the country as one of the least compliant Member States with the Convention. It examines the practices and tactics adopted by Turkish prosecutorial and judicial actors and government authorities to evade implementing European Court judgments. It further analyses critical concerns engaging CoE values that are behind those tactics: the lack of an independent and impartial judiciary and the erosion of the rule of law, which lie at the heart of the current crisis between Türkiye and the CoE. Finally, the briefing offers a series of recommendations to the CoE institutions and Member States on how to respond to the Turkish authorities' conduct, to press for the implementation of ECtHR judgments and to uphold and promote the Convention framework.

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.[10]

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

[10] 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.

systemic problems and ordered general measures to be implemented.[11] 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.[12] This practice was also highlighted by the Grand Chamber in its judgment in *Kavala v. Türkiye*.[13] 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. Such practices amount to a discreet but systematic effort by the judicial authorities to hinder access to justice. 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 individuals from securing the effective protection of the law and the opportunity for release.[14]

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.[15]

There are numerous leading cases against Türkiye pending implementation.[16] 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.[17] 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.[18]

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[11] 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.

[12] 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 .

[13] ECtHR, *Proceedings Under Article 46 § 4, in the Case of Kavala v. Türkiye* (28749/18), paras 143-145, 151, 161-162.

[14] 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

[15] 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/).

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

[17] 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 .

[18] 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

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.[19] 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.[20] In some instances, the President and his governing coalition and advisors have publicly attacked the ECtHR rulings or those TCC judgments in line with the Convention,[21] conduct that risks undermining the integrity of the Convention system and 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. Multiple examples described below show 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 Convention (Article 6) and in Türkiye's Constitution (Articles 9 and 138), is a part and parcel 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.[22] It requires freedom from external and internal undue pressure and influence,[23] but also impartiality, including the appearance of impartiality.[24] Judicial independence and impartiality is essential for the effective investigation, prosecution and, where appropriate, criminal accountability for grave human rights violations,[25] and the protection of the full array of Convention rights.

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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.

[19] 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.

[20] 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).

[21] 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.

[22] 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.

[23] 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.

[24] See e.g. ECtHR, *Campbell and Fell v. the United Kingdom*, App nos 7819/77 and 7878/77, 28 June 2014, para. 78.

[25] 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.

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.[26] 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.[27]

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, [28] 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.[29] 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.[30]

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.[31]

The Venice Commission has twice expressed serious concerns about these changes and their impact on the CJP's independence.[32] Most recently, in its December 2024 opinion on the CJP, the Commission 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

[26] 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.

[27] 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.

[28] CJP mission statement on website: www.hsk.gov.tr

[29] 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.

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

[31] 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.

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

complete control over the body that is supposed to guarantee the independence of the judiciary."[33] 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."[34] 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.[35]

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.[36]

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.[37] For example, in 2017 and 2021[38] 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.[39] This prosecutor was later elected as Deputy President of the CJP[40] 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

[33] 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.
[34] Ibid.
[35] Ibid, p.29.
[36] 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.
[37] 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.
[38] 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.
[39] 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.
[40] 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.

committee,[41] which led the ruling political coalition to nominate all candidates.[42] 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.[43] Two members appointed through this process had previously worked for the AKP or held government positions,[44] and one had been previously appointed to the CJP by President Erdoğan himself.[45] 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.[46]

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.[47] However, reports suggest that the CJP's powers related to disciplinary proceedings, transfers,[48] 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.[49] Striking examples include the CJP's actions in the case of Osman Kavala,[50] the measures taken against Judge Ayşe Sarısu Pehlivan,[51] the criminal

[41] 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 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.
[42] Ibid. p. 45.
[43] See https://www.bbc.com/turkce/haberler-turkiye-57186006 ; Bakırcı, (*supra* note 41) 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.
[44] 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 ;
[45] See https://web.archive.org/web/20150909191540/http://www.hsyk.gov.tr/uyeler/uyeler/aysel-demirel.html
[46] Bakırcı, (*supra* note 41), p. 43.
[47] See e.g. ECtHR, *Bilgen v Türkey,* no. 1571/07, 9 March 2021, para. 63.
[48] 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).
[49] 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.
[50] 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/).
[51] 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).

proceedings involving opposition politician Ekrem Imamoğlu,[52] the Sinan Ateş murder case,[53] and the handling of a case involving a MHP local politician arrested for violent behaviour in court.[54]

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.[55] 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.[56] 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.[57] 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.[58] 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.[59]

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

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[52] 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).

[53] 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).

[54] 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).

[55] 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.

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

[57] 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.

[58]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.

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

the candidates reported interviews of no more than two or three minutes with no substantial questions.[60]

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 by the CJP.[61] 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.[62]

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,[63] 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.

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.

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".[64] 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.[65] Additionally, a domestic remedy cannot be considered effective if it lacks minimum guarantees of promptness[66] or if the State fails to ensure its implementation when granted.[67] 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.[68]

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[60] 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.

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

[62] See https://www.aljazeera.com/news/2023/11/10/erdogan-criticises-top-turkey-court-stoking-judicial-crisis

[63] Under Article 159 of the Constitution, 8 out of 13 members of the CJP are members of the judiciary.

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

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

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

[67] 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.

[68] 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.

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.[69] As their biographies reveal, five members currently appointed by President Erdoğan have previously held government positions: one was chief advisor to the President;[70] two are former Deputy Ministers of Justice (who were *ex officio* members of the CJP);[71] one was a former official in the Ministry of Justice;[72] and one was a former Director of Presidential Administrative Affairs.[73] Additionally, two of the three members elected by Parliament have also been affiliated with the government or the ruling party.[74]

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.[75] 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.[76] 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.[77]

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.[78] 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.[79] 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.[80] The TCC, in a later judgment explicitly refused to implement the ECtHR's judgments concerning the pre-trial detention of judicial officers including Altan.[81]

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.[82] 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

[69] Venice Commission Opinion No. 875/2017 (*supra* note 32), para. 94; Bakırcı (*supra* note 41123) pp. 54-55.
[70] See biography: https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/doc-dr-recai-akyel/
[71] 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/
[72] See biography: https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/baskanvekilleri/basri-bagci/
[73] See biography: https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/doc-dr-metin-kiratli/
[74] 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
[75] Venice Commission Opinion No. 875/2017 (*supra* note 32), para. 121.
[76] See Communication of 26 January 2024 by NGOs in *Kavala v. Türkiye*, para. 36.
[77] https://www.hukukihaber.net/yilmaz-akcil-anayasa-mahkemesi-uyeligine-secildi
[78] See Bakırcı (*supra* note 41), p. 61.
[79] TCC, *Mehmet Osman Kavala (2)*, App no. 2020/13893, 29 December 2020, https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/13893.
[80] ECtHR, *Alparslan Altan v Turkey,* App no. 12778/17, 16 April 2019, para. 138.
[81] See below para. 27.
[82] Bertil Emrah Oder, 'The Resistance-Deference Paradox', 28 September 2022, https://verfassungsblog.de/the-resistance-deference-paradox/.

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[83] 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".[84] Since then, several TCC judgments have failed to comply with the ECtHR judgment[85] and the court has been delaying rulings on related cases, seemingly as a means to avoid implementing *Yalçınkaya*.[86] 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.[87]

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.[88] 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.[89]

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[90] and judgments requiring lower courts to suspend criminal proceedings against MPs with parliamentary immunity.[91]

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.[92] 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

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[83] ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, 26 September 2023.

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

[85] 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/

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

[87] 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

[88] 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.

[89] 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.

[90] 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).

[91] 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).

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

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.[93] However, the Court of Cassation not only ignored this order but also took the unprecedented step of seeking a criminal investigation against the TCC members.[94] President Erdoğan responded by criticizing the TCC, suggesting it "made many mistakes" and even proposing limiting individual applications to the TCC.[95]

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.[96] The Court of Cassation once more refused to comply. As Atalay's conviction became final, Parliament stripped him of his mandate.[97] The TCC declared this decision "null and void" in August 2024.[98] During an extraordinary parliamentary session to address this, an MP from Atalay's party was physically attacked by a member of the presidential party.[99] 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 appears to be a pressing need to reconsider the ECtHR's and CM's presumption that the TCC remains an effective remedy in cases raising politically sensitive issues.

IV. Conclusion

The analyses in this submission reveal three fundamental issues regarding Türkiye's non-compliance with its obligations under the Convention 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 to the integrity of the CoE system as a whole, setting a dangerous precedent for other Member States. Without decisive and unified action by

[93] 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).
[94] See https://www.bbc.com/turkce/articles/c72q6d5d9j2o.
[95] See https://www.aljazeera.com/news/2023/11/10/erdogan-criticises-top-turkey-court-stoking-judicial-crisis.
[96] TCC, *Can Atalay (3)* [Plenary Assembly], App. no. 2023/99744, 21 December 2023 (https://kararlarbilgibankasi.anayasa.gov.tr/BB/2023/99744).
[97] https://www.reuters.com/world/middle-east/turkish-parliament-strips-status-opposition-mp-after-judicial-clash-2024-01-30/.
[98] https://bianet.org/haber/constitutional-court-declares-revocation-of-can-atalays-mp-status-null-and-void-298121.
[99] 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.

CoE institutions and Member States, the Convention framework - a cornerstone of Europe's human rights system - is at risk of being undermined.

V. Recommendations:

To the Parliamentary Assembly of the Council of Europe

1. Strengthen the monitoring process on Türkiye's compliance with the Convention and ECtHR judgments through steps such as regular fact-finding country visits, reporting and the preparation of resolutions.
2. Continue advocating for the Complementary Joint Procedure, as outlined in PACE resolutions 2319 (2020) and 2518 (2023), to address persistent non-compliance.
3. Urge Türkiye to amend its Constitution and laws governing the CJP to introduce essential safeguards to build and protect judicial independence in line with the Venice Commission's opinions and recommendations.
4. Condemn Türkiye's continuing political repression and abuse of process before the CoE institutions to evade its obligations and encourage member states to impose targeted measures for accountability on perpetrators of judicial abuse.

To the Secretary General of the Council of Europe

1. Initiate an Article 52 Inquiry and formally request Türkiye to explain how its domestic laws and practices ensure the effective implementation of the Convention and comply with ECtHR judgments. This inquiry should:
    - Focus on cases of systemic non-compliance, including:
        - *Kavala* (28749/18); unlawful and arbitrary deprivation of liberty aimed at silencing human rights defenders, stifling pluralism, and limiting freedom of political debate;
        - *Selahattin Demirtaş (No. 2)* (14305/17) and *Yüksekdağ Şenoğlu and Others* (14332/17); arbitrary detention aimed at restricting political activity and debate;
        - *Öner and Türk* (51962/12), *Işıkırık* (41226/09), *Artun and Güvener* (75510/01), *Altuğ Taner Akçam* (27520/07), and *Nedim Şener group* (38270/11); disproportionate interference with the right to freedom of expression, arbitrary pre-trial detention of journalists, unwarranted criminal convictions related to certain criminal law provisions including 'aiding illegal organizations', 'denigrating the state', and 'insulting public officials';
        - *Oya Ataman* group (74552/01); unwarranted interference in the right to peaceful assembly, prosecution and excessive force against peaceful demonstrators;
        - *Yüksel Yalçınkaya* (15669/20); violation of the principle of no punishment without law (legality) due to conviction for 'membership in an armed terrorist organization' without establishing individual responsibility;
        - *Alparslan Altan* group (12778/17) and *Akgün* (19699/18); unlawful detention and excessive interpretation of flagrante delicto negating judicial safeguards;
        - *Gurban* group (4947/04); absence of a review mechanism in Turkish law for aggravated life sentences to verify whether legitimate grounds still justify continued imprisonment;
        - *Piskin* (33399/18); failure of courts to thoroughly examine arguments of the public sector workers dismissed under the state of emergency, provide reasons for dismissing objections, and clearly present grounds for their dismissals.
    - Include a detailed assessment of Türkiye's legislative, constitutional, and institutional framework governing the judiciary, prosecutorial authorities, and human rights protection mechanisms.

- Encourage Türkiye to provide a concrete action plan to resolve systemic deficiencies and demonstrate compliance with Convention standards and implement the ECtHR judgments

2. Establish a CoE task force to provide strategic guidance on engaging with Türkiye to formulate a roadmap for implementation of ECtHR judgments effectively.
3. Mobilize resources for judicial reform to bring the current system in line with the Convention standards and the opinions of the Venice Commission.
4. Provide technical and financial assistance to support civil society and independent legal actors advocating for judicial independence and rule of law, monitoring compliance and disseminating information about violations.

To the Committee of Ministers of the Council of Europe

1. Use all effective diplomatic and political channels to demand compliance in leading cases, 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.
2. Adopt robust interim resolutions requiring Türkiye to implement judicial and legislative reforms and comply with ECtHR judgments by specific deadlines.
3. Establish a working group dedicated to monitoring Türkiye's implementation of systemic reforms addressing structural issues highlighted by the ECtHR and CM.
4. Condemn and take steps against Türkiye's continued tactics constituting abuse of process before the CM to evade its obligation to implement ECtHR judgments.
5. If Türkiye continues to defy ECtHR judgments, explore the possibility of more robust actions designated under the Convention and CoE statutes.

For the Council of Europe Commissioner for Human Rights

1. Conduct thematic fact-finding missions to document ongoing judicial abuses and amplify cases of non-compliance with ECtHR rulings, and issue regular public statements highlighting the issues
2. Continue the efforts of previous commissioners by publishing reports highlighting the erosion of judicial independence and its impact on human rights in Türkiye.
3. Engage and consult with individuals affected by Türkiye's non-compliance with ECtHR judgments, providing visibility to their plight on international platforms.
4. Facilitate dialogue between Turkish authorities, CoE institutions, and civil society to address systemic failures and promote compliance with Convention obligations.
5. Continue the practice of previous commissioners by preparing third-party interventions on key cases before the ECtHR and Rule 9.4 submissions to the Committee of Ministers.

To Member States of the Council of Europe

1. Support stronger supervisory mechanisms under the CM to ensure Türkiye's compliance with ECtHR judgments, and actively participate in monitoring systemic non-compliance.
2. Collaborate with international organizations such as the EU and UN and their human rights institutions and mechanisms with a view to convincing Türkiye to adhere to Convention obligations and raise these issues during international human rights reviews.
3. Use bilateral diplomatic channels to urge Türkiye to implement ECtHR judgments, focusing on emblematic cases like Osman Kavala, Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu.

4. Tie development aid and financial support to measurable progress in judicial independence and compliance with ECtHR rulings, while offering targeted assistance to civil society organizations advocating for reform.
5. Advocate for legislative and constitutional reforms in Türkiye to establish and protect judicial independence and provide technical assistance to implement these changes.