

17 January 2025

Rule 9.2 submission to the Committee of Ministers by the Turkey Human Rights Litigation Support Project, and Human Rights Watch on the measures required for the implementation of *Kavala v. Turkey* (Application no. 28749/18, 10 December 2019) and Proceedings under Article 46§4 in the case of *Kavala v. Türkiye* [GC] (Application no. 28749/18, 11 July 2022)

I. INTRODUCTION

1. This communication is submitted by the Turkey Human Rights Litigation Support Project, and Human Rights Watch (“the NGOs”) pursuant to Rule 9.2 of the Committee of Ministers’ Rules for the Supervision of the Execution of Judgments. It provides updates on developments relevant to the state of implementation of individual and general measures in *Kavala v Turkey* and in the *Proceedings under Article 46 § 4 in the case of Kavala v Türkiye*. It offers recommendations to the Committee of Ministers (“the Committee”) in its supervision of these judgments’ implementation, based on previous unimplemented recommendations made jointly by the NGOs and the International Commission of Jurists.¹
2. The case concerns the arrest and pre-trial detention of businessperson and human rights defender Osman Kavala, involved in setting up numerous non-governmental organisations and civil society movements in Türkiye. Arrested on 18 October 2017, Mr. Kavala was accused of “attempting to overthrow the constitutional order and the Government through force and violence” within the context of the Gezi Park protests of 2013 (Article 312 of the Turkish Criminal Code (TCC)) and “to overthrow the constitutional order” within the context of the attempted coup d'état of July 2016 (Article 309 TCC).
3. The European Court of Human Rights (“the ECtHR” or “the Court”) found in *Kavala v. Türkiye* (App. no. 28749/18, 10 December 2019) that Mr. Kavala’s arrest and pre-trial detention lacked reasonable suspicion, relied largely on his exercise of his rights as a human rights defender with excessively lengthy judicial reviews, and aimed to silence him and deter human rights defenders violating Articles 5§1, 5&4 and 18 of the European Convention on Human Rights (“the Convention”). Following Türkiye’s failure to release Mr. Kavala, the Committee initiated infringement proceedings under Article 46§4. The Grand Chamber confirmed a violation of Article 46§1 (*Proceedings under Article 46§4 in the case of Kavala v Türkiye* [GC], App. no. 28749/18, 11 July 2022), citing Türkiye’s lack of good faith in implementing the Court’s judgment. The case remains under enhanced supervision before the Committee.

¹ 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, 1492nd meeting of the Committee of Ministers (March 2024) (DH), DH-DD(2024)263
([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2024\)263E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)263E)).

II. INDIVIDUAL MEASURES

Mr. Kavala's continuing detention and Türkiye's persistent defiance of the Convention system

4. Osman Kavala has been detained for over seven years. In September 2023, his aggravated life sentence for “attempting to overthrow the Government” in the context of the Gezi Park protests were upheld, making his conviction final. Despite the Court’s 2019 judgment and its exceptional 2022 finding of a violation of Article 46§1, the Government’s latest Action Plans and its latest Rule 9.6 submission fail to outline any measures to end his detention.²
5. While the Government mentions pending applications by Mr. Kavala before the ECtHR and the Constitutional Court with respect to new violations linked to his conviction, and continued detention,³ the NGOs recall that the Grand Chamber has already held that “[the Court’s] finding of a violation of Article 18 taken together with Article 5 in the Kavala judgment vitiated any action resulting from the charges related to the Gezi Park events and the attempted coup” (emphasis added).⁴ The Court unequivocally requires Mr. Kavala’s immediate and unconditional release and acquittal.
6. Mr. Kavala’s continued detention, despite repeated requests by Council of Europe bodies,⁵ is in breach of the Court’s judgments and evidences gross disregard for the Convention system.⁶ His life sentence further exacerbates the violations⁷ and has a chilling effect on the exercise of Convention rights in Türkiye.
7. In its latest Action Plans and Rule 9.6 submission, the Government claims close and constructive cooperation with the Committee. However, in the NGOs’ view, the lack of good faith noted in the *Kavala* judgment under Article 18⁸ and in the infringement proceedings⁹ persists. Authorities continue to obstruct implementation and have targeted individuals and institutions demanding Mr. Kavala’s release and an end to the abuse of the criminal justice system against him.¹⁰ A recent example of this is journalist G. Ö.’s arrest and fine, in November 2024, for criticising the arbitrariness of the indictment against Mr. Kavala,¹¹ illustrating continued resistance to

² See Action Plan of 12 July 2024 concerning the case of *Kavala v Türkiye* ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2024\)803E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)803E)); Action Plan of 15 April 2024 ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2024\)432E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)432E)); Rule 9.6 - Reply from the authorities (05/03/2024) following a communication from NGOs (26/01/2024) concerning the case of Kavala v. Türkiye (Application No. 28749/18) ([https://hudoc.exec.coe.int/?i=DH-DD\(2024\)282E](https://hudoc.exec.coe.int/?i=DH-DD(2024)282E)).

³ See Action Plan of 15 April 2024 ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2024\)432E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)432E)), paras. 8-10; Rule 9.6 - Reply from the authorities (05/03/2024), paras. 10-12.

⁴ ECtHR, *Proceedings under Article 46§4 in the case of Kavala v Türkiye* [GC] (Application no. 28749/18, 11 July 2022), para. 145 and para. 172.

⁵ Since the *Kavala v Turkey* judgment, the Committee of Ministers has issued over 20 separate decisions urging the Turkish authorities to release Osman Kavala or condemning their failure to do so. See also Parliamentary Assembly of the Council of Europe, Resolution 2518 (2023), Call for the immediate release of Osman Kavala, Adopted on 12 October 2023.

⁶ See also See Rule 9.2 submission by the TLSP, HRW and the ICIJ of 26 January 2024 (supra n 1), paras. 9-13.

⁷ Ibid.; see also <https://redress.org/casework/kavala-v-turkiye-third-party-intervention/>.

⁸ ECtHR, *Kavala v Turkey*, Application no. 28749/18, 10 December 2019, para. 232.

⁹ ECtHR, *Proceedings under Article 46§4 in the case of Kavala v Türkiye* [GC], Application no. 28749/18, 11 July 2022, para. 173.

¹⁰ See the Ministry of Foreign Affairs’ press release in response to the PACE’s Resolution 2518(2023) of October 2023 calling for the immediate release of Osman Kavala: https://www.mfa.gov.tr/no_256_avrupa-konseyi-parlamente-meclisi-tarafindan-ulkemize-iliskin-kabul-edilen-tavsiye-ve-karar-hk.en.mfa.

See also: <https://www.aljazeera.com/news/2021/10/19/turkey-issues-rebuke-to-10-western-embassies-over-kavala-case>.

¹¹ See <https://www.gercekgundem.com/guncel/gazeteci-gokhan-ozbek-serbest-birakildi-gozalti-gerekcesi-belli-oldu-501347>.

“conclusions and spirit” of the Court’s judgments and refusal to undertake the required individual measures.

8. In its decision on 3-5 December 2024 the Committee referred to three potential avenues for implementation and reiterated its request for a “rapid examination by the Constitutional Court of the applicant’s pending application, with full regard to the Court’s findings”.¹² While the Constitutional Court’s heavy case-load has been noted as an obstacle,¹³ it has demonstrated efficiency in selected high-profile cases, such as two applications by MP Can Atalay, a co-defendant in the Gezi Park case.¹⁴ As detailed below, the NGOs consider that there is a clear connection between the Government’s resistance to implementing the *Kavala* judgment and the Constitutional Court’s delays in examining Mr. Kavala’s pending applications. This connection should be taken into account by the Committee in its reliance on the Constitutional Court.¹⁵

III. GENERAL MEASURES

Independence and impartiality of the judiciary

9. The systemic issues identified in the ECtHR judgments highlight how the lack of judicial independence in Türkiye enables arbitrary detentions, politically motivated prosecutions, and a broader erosion of human rights protections. Urgent general measures are required to address these deficiencies, including structural reforms to safeguard judicial autonomy, and ensure adherence to the rule of law. However, in its latest Action Plan and Rule 9.6 submission, the Government reasserts that domestic legislation fully ensures the independence and impartiality of judiciary in Türkiye, without providing any evidence of specific general measures taken to address the systemic issues detailed below.

Structural deficiencies in the Council of Judges and Prosecutors (CJP)

10. As the NGOs have outlined in their previous Rule 9.2 submission,¹⁶ the CJP – the main self-governing body of the judiciary and, in theory, a key guarantee of judicial independence – severely lacks structural independence. The NGOs main concerns have also been confirmed by the Venice Commission’s December 2024 opinion on the composition of the CJP and the procedure for the election of its members.¹⁷
11. Firstly, European standards require that at least half of the members of judicial councils should be judges elected by their peers, yet none of the CJP’s 13 members are appointed by members of the

¹² Avenues identified include a re-trial following a Convention-compliant Constitutional Court decision on one or both of Mr. Kavala’s pending applications; reopening of the criminal proceedings following a finding of a breach of Article 6 by the ECtHR in the pending case; or reopening of the criminal proceedings following a unilateral declaration or friendly settlement in the context. See Notes on the Agenda for the Committee of Ministers’ 1514th meeting and Decision on 3-5 December 2024 (DH), H46-37 *Kavala v. Türkiye* (Application No. 28749/18), CM/Notes/1514/H46-37 (<https://hudoc.exec.coe.int/ENG?i=CM/Notes/1514/H46-37E>).

¹³ Ibid.

¹⁴ See Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 47-50.

¹⁵ Ibid., para. 20; Third Party Intervention by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists in *Kavala v Türkiye* (no.2) (App no. No. 2170/24), para. 20 (<https://www.hrw.org/news/2024/11/01/joint-third-party-intervention-kavala-v-turkiye-case>).

¹⁶ Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 26-29.

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.

judiciary.¹⁸ The Minister and Deputy Minister of Justice are *ex officio* members, while 4 members are directly appointed by the President of Türkiye in a discretionary manner.¹⁹ The remaining 7 members are elected by Parliament. Considering the change from the parliamentary system to the presidential system following the constitutional reform of 2017, these members are likely to be of the same political persuasion as the President, especially given that parliamentary elections are held at the same time as presidential elections.²⁰

12. This lack of peer-elected members jeopardizes the impartiality of the CJP, as it creates a structure where executive and legislative influences dominate. Appointments to the CJP since 2017 in practice evidence the deeply problematic nature of the Government's role in determining the composition of this body, with multiple examples of highly politicised appointments of judges and prosecutors with a history of cracking down on government critics and political opponents.²¹

Parliamentary appointments and consensus claims

13. As regards the 7 members appointed by Parliament, the Government's Action Plan points to a 'large consensus' in the 2021 elections.²² However, this supposed consensus resulted from the bypassing of the nomination and election procedure laid out in Article 159 of the Constitution, which provides for a multi-round and confidential voting system with qualified majority thresholds. A "quota" was thus negotiated prior to voting, whereby the ruling AKP/MHP coalition determined the names for 4 CJP seats and the opposition İYİ Party/CHP determined the remaining 3 seats (excluding the HDP from the process).²³
14. This ensured that more than half of Parliament-appointed CJP members were selected by the ruling political coalition. Two of these current members have directly worked for the AKP or held government positions, while the third was previously appointed to the CJP by President Erdoğan himself.²⁴ The fourth member, who was formerly a legal advisor to the MHP's leader,²⁵ resigned from the CJP in 2022 and was replaced through an election on 31 January 2024. Therefore, 9 out of 13 current CJP members have proven ties with the government and the ruling AKP.

Impact on broader judicial bodies

15. The lack of structural independence of the CJP taints, in turn, the structural independence of the Court of Cassation and the Council of State, given the CJP's power to appoint most of their

¹⁸ Ibid. para. 117; Committee of Ministers, Appendix to Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges, Article 27.

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 n 17), para. 118.

²⁰ Ibid.

²¹ See Third Party Intervention by TLSP, HRW, and ICJ in *Kavala v Türkiye* (no.2) (supra n 15), para. 8.

²² See Action Plan of 12 July 2024, para. 30.

²³ See <https://www.bbc.com/turkce/haberler-turkiye-57186006>; Fahri Bakırçı, '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 (<https://dergipark.org.tr/en/download/article-file/2278599>). Without such an agreement, according to Article 159 of the Constitution, a failure of the ruling bloc to secure a 2/3rd or 3/5th majority could have allowed the opposition parties to determine anywhere between 0 and 7 CJP members, due to the randomised drawing system envisaged. The "quota" system limited this number to 3 (just under half).

²⁴ See <https://www.hsk.gov.tr/bilal-temel> ; <https://www.hsk.gov.tr/havvanur-yurtsever> ; <https://www.birgun.net/haber/hsk-nin-yeni-uyesi-havvanur-yurtsever-oldu-366938> ; <https://web.archive.org/web/20150909191540/http://www.hsyk.gov.tr/uyeler/uyeler/aysel-demirel.html>.

²⁵ See <https://www.cumhuriyet.com.tr/turkiye/mhpdeki-gorevinden-istifa-eden-hamit-kocabey-kimdir-hamit-kocabey-mhpden-neden-istifa-etti-1963230>.

members.²⁶ The President has the power to appoint their remaining members. More broadly, the CJP's lack of independence has led to politically charged decisions by this body concerning promotions, transfers, disciplinary measures, and the dismissal of judges and prosecutors.²⁷ The NGOs recall that decisions affecting the career of judges and prosecutors should be based on objective criteria and a transparent process.²⁸ Although a number of criteria are laid out in Law no. 2802 on Judges and Prosecutors, the CJP has repeatedly used its powers over members of the judiciary in breach of these criteria, to further the personal or political interests of the AKP and MHP.²⁹ Furthermore, contrary to the Government's suggestion,³⁰ the ambiguously formulated amendment from 2020 to the rules on the promotion of judges and prosecutors has not prevented the promotion of judges and prosecutors with a track record of non-compliance with ECtHR and Constitutional Court judgments.³¹

Absence of judicial review of CJP decisions

16. As also highlighted by the Venice Commission, another problematic issue is 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 should be subject to judicial review, domestic law precludes review before an independent judicial body of CJP decisions other than dismissal.³² This has created an environment where decisions of significant consequence are shielded from scrutiny, exacerbating concerns about accountability, transparency and fairness.

Politicized recruitment and promotion

17. In addition, the process of recruitment of new judges and prosecutors lacks adequate criteria and safeguards against interference by the executive; it has become deeply politicised in practice, prioritising political affiliations with the ruling coalition over objective merit.³³ As noted by the Venice Commission, the recruitment of judges and prosecutors in Türkiye does not adequately prioritize merit or diversity, failing to ensure representation across various judicial levels, gender, and regions. This shortfall undermines European standards for judicial independence.

18. Given all the above issues indicating a widespread lack of independence within the judiciary in Türkiye -and given also the executive's role in overseeing decisions to suspend judges' and

²⁶ In October 2024, the CJP appointed 8 new members to the Court of Cassation and 3 new members to the Council of State (see <https://www.hurriyet.com.tr/bilgi/galeri-resmi-gazete-kararlari-3-ekim-2024-yargitay-ve-danistay-uye-secimi-listeleri-resmi-gazete-yayinlandi-bugunku-resmi-gazete-kararlari-neler-42551780/2>).

²⁷ See Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 34-42.

²⁸ See e.g. ECtHR, *Bilgen v Turkey*, no. 1571/07, 9 March 2021, para. 63.

²⁹ Third Party Intervention by TLSP, HRW, and ICJ in *Kavala v Türkiye* (no.2) (supra n 15), para. 10; Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 34-40.

³⁰ Action Plan of 12 July 2024, para. 16.

³¹ Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 34-36; Third Party Intervention by TLSP, HRW, and ICJ in *Kavala v Türkiye* (no.2) (supra n 15), para. 16.

³² Venice Commission, Türkiye, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (supra n 17), 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; ECtHR, *Sarisu Pehlivan v Türkiye*, App no. 63029/19, Judgment of 6 June 2023.

³³ Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 30-33; Third Party Intervention by TLSP, HRW, and ICJ in *Kavala v Türkiye* (no.2) (supra n 15), paras. 11-12.

prosecutors' functional immunity³⁴ the Turkish judiciary is thus caught in a self-reinforcing cycle of political capture and is severely deprived of the safeguards required for it to function independently and impartially.³⁵ In such conditions, the judicial system has become a tool in the hands of the ruling political coalition in their pursuit of political and personal interests.

Systemic failures in protecting human rights and Convention standards

The repressive climate for political debate and pluralism

19. The Government's Action Plan asserts that senior government officials have demonstrated their attachment to human rights and judicial independence, citing a number of speeches on human rights and judicial independence.³⁶ However, underneath these abstract and hollow references, senior government officials have continued to systematically and deliberately undermine human rights protection and judicial independence to stifle political debate and pluralism. The Government has not disclosed how its "new human rights action plan" and "judicial reform strategy" would address any of the issues highlighted in the present submission, as well as past recommendations in this case by the NGOs and the Committee.

Abuse of criminal proceedings

20. As highlighted by the NGOs in their previous Rule 9.2 submission in this case, there has been a stark increase in abuse of criminal proceedings to suppress or punish the exercise of Convention rights.³⁷ The legitimate exercise of Convention rights has been increasingly portrayed as connected with violent events and criminal offenses, while due process rights and legality have been rendered meaningless as a result of a selective application determined by the interests of the ruling political coalition.³⁸

21. The NGOs recall that States have heightened duties to protect the rights of human rights defenders under international law. Yet, examples of arbitrary arrest, detention, and prosecution of human rights defenders, journalists, civil society organisations, politicians, and others for denouncing Turkish authorities' impunity for human rights violations and corruption abound.³⁹ The judiciary and other authorities systematically fail to implement relevant ECtHR judgments and adhere to Convention standards when these conflict with the ruling coalition's interests.⁴⁰

22. The Gezi Park trial against Osman Kavala and other defendants is emblematic of these judicial practices. In its decision to uphold Mr. Kavala's conviction on 28 September 2023,⁴¹ the Court of Cassation did not even mention the two ECtHR judgments concerning his detention. In the same decision, it upheld the conviction of parliamentarian Can Atalay, rejecting Constitutional Court case-law on parliamentary immunity and failing to mention ECtHR case-law finding the detention of elected parliamentarians in breach of their Convention rights.⁴² The Court of Cassation went so

³⁴ The Ministry of Justice grants permission for the lifting of their functional immunity. GRECO has recommended transferring this power to the judiciary (GRECO, Fourth Evaluation Round on Corruption prevention in respect of members of parliament, judges and prosecutors, Second Interim Compliance Report on Turkey (October 2020), §85.)

³⁵ See also Transparency International (2020), ['Examining State Capture: Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey'](#), pp. 21-24.

³⁶ Action Plan of 12 July 2024, paras. 23-30.

³⁷ Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 14-18.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid., paras. 19-25.

⁴¹ Court of Cassation, File no. 2023/12611, Decision of 28 September 2023.

⁴² See Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), para. 25.

far as to equate non-violent human rights advocacy with crimes against national security, citing as evidence the fact of creating “points of resistance” in society.⁴³ There could be no clearer expression of the criminalisation of dissent.

Compromised role of the Constitutional Court

23. Moreover, deep issues surround the Constitutional Court’s independence and effectiveness as the final arbiter for alleged violations of the Convention against perceived dissenters in Türkiye. First, the Constitutional Court’s structural independence is also seriously lacking, as 12 out of 15 of its members are appointed by the President. At least 7 of the current Constitutional Court members have had formal affiliations or ties with the Government or the ruling party. This lack of structural independence from executive powers has allowed politically motivated appointments of judges who have proven their loyalty to the ruling political coalition and committed to cracking down on Convention rights.⁴⁴ Second, while the Government affirms that the Constitutional Court prioritises review of detention and carries out its review without excessive delays,⁴⁵ practice suggests that the Constitutional Court times its decisions strategically to avoid undermining the ruling coalitions’ interests. Thus, applications concerning the detention of and criminal proceedings against opposition politicians have tactically remained pending for several years longer than the maximum acceptable period under the ECtHR’s case-law,⁴⁶ while MPs challenging the suspension of their mandate on terrorism-related grounds have obtained review by the Constitutional Court only once their mandate had lapsed or after they have been barred from running for office due to a conviction.⁴⁷ Third, the Constitutional Court has on several occasions rejected ECtHR judgments relating to the arbitrary detention of perceived dissenters.⁴⁸ Fourth, it has been subject to increasing pressure from within and outside the judiciary in these cases, including non-implementation of its judgments in key cases.⁴⁹ Taken as a whole, these issues reveal a systemic failure of individual applications to the Constitutional Court to ensure the cessation of violations against persons perceived to undermine governing coalition’s interests, let alone reparation.

Systematic interference in cases involving human rights defenders, political opposition, or government critics

24. Positions taken publicly by the President or other high-ranking officials regarding pending judicial proceedings have a clear influence on subsequent decisions by judicial authorities in these proceedings.⁵⁰ The Gezi Park trial has crystallised the practice of political meddling in judicial proceedings against perceived dissenters or political opponents and the increasingly bold and irresistible nature of such interferences, thanks to executive capture of the judiciary. To name only

⁴³ Court of Cassation, File no. 2023/12611, Decision of 28 September 2023, p. 8.

⁴⁴ See Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), para. 36.

⁴⁵ Action Plan of 12 July 2024, para. 22.

⁴⁶ Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), para. 20.

⁴⁷ Third Party Intervention by TLSP, HRW, and ICJ in *Kavala v Türkiye* (no.2) (supra n 15), para. 20.

⁴⁸ In addition to defying the ECtHR’s *Kavala* judgment in an inadmissibility decision of 29 December 2020 (*Osman Kavala* (2), App no. 2020/13893, 29 December 2020), the Constitutional Court also rejected as *ultra vires* ECtHR judgments finding the post-coup arrest and detention of members of the judiciary based on an overly broad and unforeseeable interpretation of Turkish law in breach of the Convention (Constitutional Court, *Yıldırım Turan*, App no. 2017/10536, Inadmissibility decision of 4 June 2020, §119).

⁴⁹ See Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 44-52.

⁵⁰ See Third Party Intervention by TLSP, HRW, and ICJ in *Kavala v Türkiye* (no.2) (supra n 15), para. 13; Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), paras. 53-57.

a few examples throughout the proceedings, the judges who decided to acquit Mr. Kavala on 18 February 2020 were threatened with the initiation of a disciplinary investigation by the CJP.⁵¹ This acquittal was soon quashed. The prosecutor involved in the Gezi Park trial was subsequently appointed to the Constitutional Court by the Turkish President.⁵² A judge who dissented to the sentencing of Mr. Kavala to aggravated life imprisonment was subject to an involuntary transfer by the CJP.⁵³ The Court of Cassation threatened criminal proceedings against judges of the Constitutional Court who held that MP Can Atalay's rights had been violated, while President announced his attention to constrain the individual application mechanism and the Constitutional Court's review powers in response.⁵⁴ As a result of the Court of Cassation's refusal to abide by the Constitutional Court's judgment, Can Atalay remains in prison and has been illegitimately stripped of his parliamentary mandate.

IV. RECOMMENDATIONS

Regarding individual measures, the NGOs urge the Committee of Ministers to:

- i. Call again for the immediate release of Osman Kavala, as required both by the ECtHR's Kavala judgment and its highly exceptional finding of a violation of Article 46§1 in July 2022;
- ii. Stress that the ECtHR's judgments clearly apply to Mr. Kavala's conviction and aggravated life sentence, which rely on the same basis as already addressed in these judgments and found to have constituted a cover for the ulterior purpose of silencing Mr. Kavala as a human rights defender;
- iii. Strongly condemn Türkiye's ongoing failure to implement these judgments, stressing that Mr. Kavala's prolonged detention for over seven years, and his conviction and life sentence are fundamentally incompatible with the values of the Convention;
- iv. Call for the initiation of the immediate quashing of Osman Kavala's conviction and sentence in line with the ECtHR's judgments;
- v. Intensify its efforts to ensure that Council of Europe institutions and member and observer states continue to engage with this case in any relations and talks with Türkiye.

Regarding general measures, the NGOs urge the Committee of Ministers to request that Türkiye address the following recommendations:

Ensure the independence and impartiality of the judiciary by:

- i. Changing the method of appointment and composition of the CJP in line with the recommendations of the Venice Commission and international standards, including:
 - ensuring that at least half of the members of the CJP are elected by the judiciary in a transparent and inclusive manner, representing various judicial levels and ensuring diversity in terms of gender and geography;
 - removing the President of Türkiye's role in the selection procedure, and the Minister of Justice and the Undersecretary of Justice from the CJP;
 - increasing the size of the CJP and the number of non-judicial members elected by Parliament, with lay members elected by Parliament after a pre-selection process by

⁵¹ See ECtHR, *Kavala v Türkiye* [GC] (Application no. 28749/18, 11 July 2022), para. 168.

⁵² See Rule 9.2 submission by the TLSP, HRW and the ICJ of 26 January 2024 (supra n 1), para. 36.

⁵³ Ibid., para. 38.

⁵⁴ Ibid., paras. 48-49.

- independent institutions like Bar Associations and universities, excluding individuals with political affiliations;
- establishing clearly, at constitutional and legislative level, that members of the CJP should enjoy security of tenure and functional immunity;
- providing that the President of the CJP should be a neutral figure, elected by its members;
- ii. Requiring that all decisions concerning judicial careers -including appointments, promotions, transfers, and dismissals- adhere to objective, transparent, and lawful criteria, subject to review by an independent judicial body;
- iii. Ensuring that recruitment of judges and prosecutors is under the responsibility of judicial bodies operating independently of the executive, ensuring merit-based, transparent, and fair recruitment practices;
- iv. Changing the process of appointing Constitutional Court members to limit the President's role and increase judicial oversight, thereby ensuring balanced representation and decision-making.

Secure an enabling environment for political debate and pluralism by:

- i. Taking comprehensive measures to address systemic failures in safeguarding Convention rights, including:
 - Halting and preventing the misuse of criminal proceedings against individuals exercising their legitimate Convention rights;
 - Implementing relevant ECtHR judgments and ensuring adherence to Convention standards, particularly in cases where systemic issues have been identified;
 - Enhancing the effectiveness of individual applications before the Constitutional Court by ensuring they provide timely and meaningful remedies for violations of Convention standards;
 - Ending impunity for violations of Convention rights through transparent and accountable mechanisms, ensuring perpetrators are held responsible in compliance with international legal obligations.
- ii. Refraining from political interference in cases involving human rights defenders, government critics, or political opposition, including any comments by political leaders on judicial decisions and ongoing proceedings in such cases, as well as smear campaigns, demotion, disciplinary proceedings, dismissal, or prosecution of members of the judiciary who make rights-compliant decisions.
- iii. Amending overbroad and vaguely worded articles of the Turkish Criminal Code and Law No. 3713 on the Prevention of Terrorism such as “attempted overthrow of the Government by force and violence,” “attempted overthrow of the constitutional order” and other offenses categorised as “crimes against the state” to meet the requirements of clarity, specificity and foreseeability inherent in *nullum crimen sine lege* and, where relevant, explicitly link criminalised behaviour to the commission of violent acts.