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STATE OF EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS JUDGMENTS IN TÜRKIYE

1. Introduction

1. This report reviews Türkiye's progress in implementing European Court of Human Rights (ECtHR) judgments since the 3rd UPR cycle, identifying persistent challenges and providing recommendations for the 4th UPR cycle.

2. The third UPR cycle made several recommendations urging the Turkish government to effectively implement the judgments of the European Court of Human Rights. These were:

- *Guarantee an independent and impartial judiciary and ensure respect for the separation of powers (Austria), 45.113, (Supported);*
- *Strengthen the independence of the judicial system and follow due judicial process according to Turkey ' s international obligations and standards (Norway), 45.133, (Supported);*
- *Ensure respect for the rule of law and an independent judiciary and implement the decisions of the European Court of Human Rights (Czechia), 45.121, (Supported);*
- *Ensure the execution of the judgments of the European Court of Human Rights (France). 45.141- (Supported);*
- *Comply with the judgments of the European Court of Human Rights concerning the rights of Greek citizens to inherit immovable property in Türkiye (Greece), 45.142, (Supported);*
- *Implement all European Court of Human Rights judgments, including the fourth inter-State case of Cyprus versus Türkiye where Türkiye was found liable (Cyprus), 46.7, (Noted) ;*
- *Comply with the judgments of the European Court of Human Rights concerning human rights violations in the occupied areas of Cyprus, not under the effective control of the Government of Cyprus (Greece), 46.9, (Noted).*

3. The report focuses particularly on the first four recommendations listed above.

4. The European Court of Human Rights (ECtHR) has issued numerous judgments against Türkiye, highlighting various human rights violations. As a member of the Council of Europe,

Türkiye is obligated to execute these judgments fully. The execution process not only involves compensatory measures but also necessitates addressing systemic issues to prevent future violations. The analysis here is based on data from the ECtHR, the Council of Europe, Turkish legal documents, and reports from non-governmental organizations (NGOs).

5. While some limited steps have been taken towards implementing certain judgments, significant concerns remain regarding systemic non-compliance. Non-implemented ECtHR judgments concern mainly violations of the right to freedom of expression and information, violations of freedom of assembly and association, violations of the freedom of thought, conscience or religion, the functioning of justice, lawfulness of detention, ineffective investigations into the actions of security forces and their impunity, and domestic violence. This report provides an overview of the current status of ECtHR judgments' execution in Türkiye and offers recommendations to address outstanding issues.

2. Overview of ECHR Judgments against Türkiye

6. The issue of how successfully ECtHR judgments are executed should be evaluated not through the sheer volume of simple judgments that have been executed or data such as the prompt and full payment of compensation, but rather by the number of leading judgments pointing to systemic, structural, and complex issues awaiting examination before the Committee of Ministers of the Council of Europe.

7. As of the latest data available, Türkiye ranks among the top Council of Europe member States in terms of pending applications before the ECtHR and pending cases supervised by the Committee of Ministers.

2.1 Overview of the cases before the Committee of Ministers

8. In 2023, the Committee of Ministers received from the European Court 78 cases against Türkiye for supervision of their execution (compared to 77 in 2022 and 106 in 2021).

9. On 31 December 2023, Türkiye had 446 cases pending execution (compared to 480 in 2022 and 510 in 2021), of which 35 were leading cases classified under enhanced procedure (compared to 36 in 2022 and 37 in 2021), and 89 were leading cases classified under standard procedure (compared to 89 in 2022 and 98 in 2021).

10. Of the leading cases under enhanced procedure in 2023, 24 have been pending for **five years or more**; similarly, 48 of the leading cases under standard procedure have been pending **for five years or more** (compared to 53 in 2022 and 61 in 2021). Approximately **60 % of the cases** under supervised under enhanced procedure have been pending for five years or more. In terms of the number of cases pending for five years or more, **Türkiye ranks 1st among 46 Council of Europe member States**.

11. Of the leading cases under the enhanced procedure in 2023, 9 have been pending for between 2 to 5 years, while 20 of the leading cases under the standard procedure have been pending for between 2 to 5 years. With these figures, **Türkiye ranks 2nd after Romania**.

12. According to the 2023 annual report of the Committee of Ministersⁱ, the pending caseload before the Committee includes notably groups of cases concerning freedom of expression and freedom of assembly, judicial independence, detention without sufficient reasons, ineffective investigations and impunity, and domestic violence. Of the new violations found by the Court in 2023, one of them concerned a violation, among others, of the principle of no punishment without law on account of conviction for membership in a terrorist organization without the establishment of the elements of the offence in an individualized manner. In this case, the Court drew attention to the large number of applications pending before it with similar complaints and made an Article 46 indication in terms of general measures. What makes this ruling historic and unprecedented is that the ECtHR explicitly said that the findings in the judgment applicable to more than 8,000 cases pending in Strasbourg and to more than 100.000 cases pending before Turkish courts that are expected to reach the Court in a few years.

13. Türkiye progress reports prepared and published by the European Commission since 2020 highlight the deteriorating human rights situation and the absence of progress in Türkiye in terms of non-execution of the judgments of the European Court of Human Rights. The last four progress reports (2020ⁱⁱ, 2021ⁱⁱⁱ, 2022,^{iv} and 2023^v) of the Commission noted that

“the Turkish legal framework includes general guarantees of respect for human and fundamental rights, but the legislation and its implementation need to be brought into line with the European Convention on Human Rights and the European Court of Human Rights case law”. They also noted that “representatives of the executive and the legislature continued to publicly criticize and openly reject ECtHR and Constitutional Court case-law”.

14. According to the Commission progress reports the Human Rights Action Plan 2021 of Türkiye “did not address critical issues or improve the overall human rights situation”. These reports indicated Türkiye’s continued refusal to implement certain ECtHR rulings.

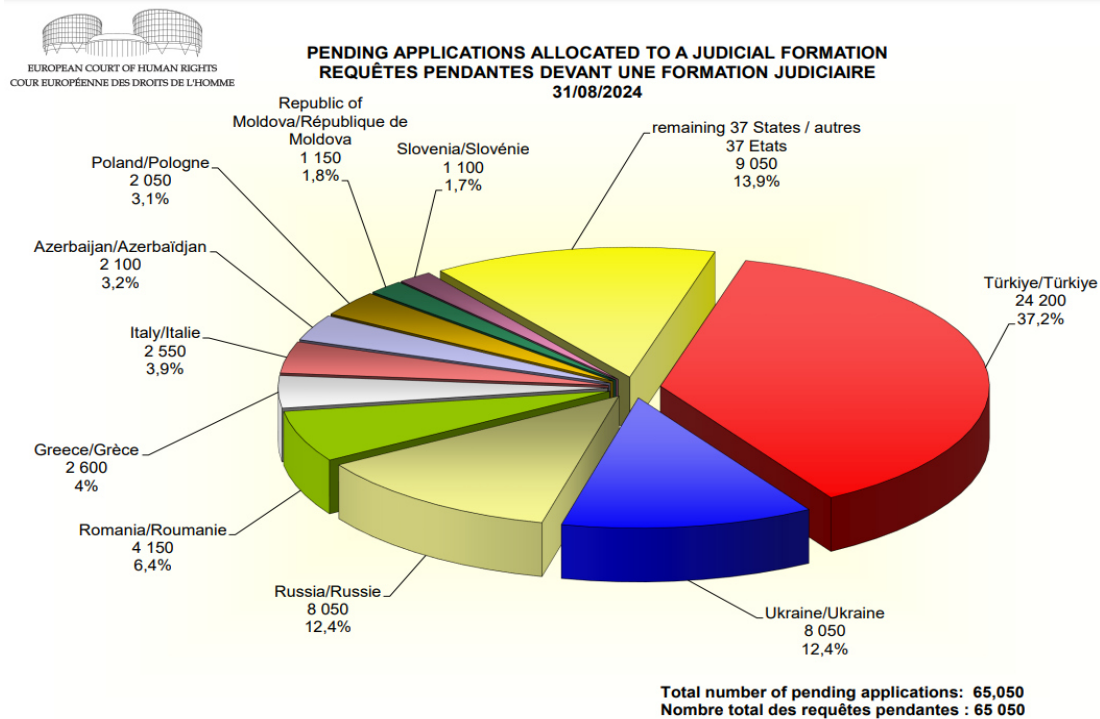
15. The latest resolution of the Council of Europe’s Parliamentary Assembly (Resolution 2494 (2023))^{vi} pointed out the high number of non-implemented ECtHR judgments by noting that

“Ukraine, Romania, Türkiye, Azerbaijan and Hungary have the highest number of non-implemented Court judgments and still face serious structural or complex problems, some of which have not been resolved for over ten years. Indeed, these five countries, and in addition the Russian Federation, account for over 70% of the cases pending implementation”.

2.2 Pending applications before the European Court

16. Another indicator of the non-execution of ECtHR judgments, as well as the deteriorating human rights situation, is the alarming increase in the number of pending applications reaching the Court from Türkiye in recent years, particularly since the adoption of the 3rd UPR cycle report.

17. By the end of August 2024 (See below chart published by the ECtHR), there were 24,200 pending cases from Türkiye before the European Court, representing 37.2% of all applications awaiting judicial formation. This is approximately equivalent to the total number of pending cases from the remaining 44 Council of Europe States, excluding Russia and Ukraine. With this figure, Türkiye tops the list of countries with cases awaiting judgment.



18. This marks a steady increase from previous years, with 20,115 cases pending at the end of 2022, 15,220 at the end of 2021, and 11,750 at the end of 2020.

19. One must not lose sight of the fact that all these cases reach the Court only after the exhaustion of domestic remedies, particularly the individual application process before the Turkish Constitutional Court. The Constitutional Court is required to examine these cases in light of the European Convention on Human Rights as interpreted by the European Court. The growing number of incoming and pending cases highlights however the failure of the entire Turkish judicial system, especially the ineffective functioning of the individual complaint mechanism.

3. Compliance with ECHR Judgments Since the 3rd UPR Cycle

20. Despite recommendations made in the 3rd UPR cycle to ensure the execution of ECHR judgments, Türkiye's compliance remains very limited. The following progress and challenges have been observed:

- **Positive Steps:** Türkiye has implemented some ECHR judgments by providing compensation to applicants and, in isolated instances, adjusting specific laws. For instance, in 2023, the Committee of Ministers closed 111 cases, including 3 leading cases under enhanced and 18 leading cases under standard supervision. In particular, the Committee could close a leading case examined under the standard procedure concerning the right to education and non-discrimination of disabled persons further to amendments in secondary legislation. The Committee also closed a leading case examined under enhanced procedure concerning discrimination on the grounds of religion due to the system in force for granting exemptions from payment of electricity bills for places of worship, following legislative amendments. In addition, 67 repetitive cases were closed because no further individual measures were necessary or possible.^{vii}
- **Areas of Non-Compliance:** However, numerous judgments remain unexecuted, particularly those addressing systemic issues such as restrictions on freedom of expression, political participation, the right to liberty and security, the right to a fair trial and the right to no punishment without law. For instance, high-profile cases concerning the imprisonment of journalists and politicians have yet to be fully resolved, indicating a pattern of disregard for ECtHR rulings. This selective implementation raises concerns about the government's commitment to upholding human rights obligations.

4. Case Studies

21. The below cases are presented here to illustrate the non-execution of ECtHR judgments:

Case 1: *Osman Kavala v. Türkiye*

22. **Background:** Osman Kavala, a human rights defender, was detained in 2017 and charged with attempting to overthrow the government. In 2019, the ECHR ruled his detention violated his right to liberty and security (Article 5) and aimed to limit civil society activities (Article 18).

23. **ECtHR Ruling:** The Court ordered Kavala's immediate release.

24. **Current Status:** In February 2022, the Committee of Ministers of the Council of Europe referred the Kavala case back to the European Court of Human Rights to determine whether Türkiye has failed to fulfil its obligation to implement the Court's 2019 judgment in this case, in

line with proceedings provided for under Article 46.4 of the European Convention on Human Rights. The Turkish authorities continued to refuse Osman Kavala's release, despite the Council of Europe Committee of Ministers' regular interim resolutions. In July 2022 the Grand Chamber of the European Court of Human Rights confirmed that Türkiye has failed to fulfil its obligations under Article 46.1 of the Convention to comply with the Chamber judgment delivered by the Court in the case of Kavala on 10 December 2019. The Court reconfirmed that Mr. Kavala's detention had been politically motivated and an attempt to silence him and dissuade other human rights defenders. His sentencing to aggravated life imprisonment is inconsistent with respect for human rights, fundamental freedoms, and the rule of law. Despite this ruling, Türkiye continues to detain Kavala, indicating a failure to execute the judgment and a broader issue of judicial independence. Türkiye is the only member state to the Council of Europe that has been demoted to monitoring status in 2017 (Resolution 2156) and subjected to Infringement Procedure due to its failure to implement the ECtHR ruling on Osman Kavala.

25. Parliamentary Assembly of the Council of Europe (PACE) Recommendation 2261 of October 2023 (para;6.1) called on the Committee of Ministers to:

'establish country monitoring in respect of the execution of judgments of the ECtHR by Türkiye. This monitoring should focus on the execution of both individual and general measures and should relate to all judgments against Türkiye pending their implementation, with a particular focus on those indicating significant problems with the system of implementing judgments of the Court or concerns about the functioning of the justice system and the rule of law'.

26. Most recently, launching of this "Complementary Joint Procedure" was mentioned and underlined by Co-rapporteurs Mr Stefan Schennach (Austria, SOC) and Ms Jill Mortimer (United Kingdom, EC/DA) in the Information Note following the fact-finding visit to Türkiye on behalf of the Monitoring Committee of the PACE^{viii}.

27. Committee of Ministers, with regard to non-implementation of the ECtHR's Kavala judgment during its 1507th meeting (DH) in September 2024, stated:

"regarding the Court's findings of a violation of Article 18 in conjunction with Article 5 of the Convention, recalled the Committee's previous decisions strongly urging the Turkish authorities to take all legislative and other measures to ensure independence of the judiciary, in particular by securing the structural independence of the Council of Judges and Prosecutors from the executive, and deeply regretted once again the absence of any progress on this issue"^{ix}

28. Thus, implementation of the Kavala judgment requires not only the immediate release of Mr Kavala, but also legislative amendments, primarily and most importantly on the structure of

the Council of Judges and Prosecutors with a view to ensuring its independence from the executive.

Case 2: *Selahattin Demirtaş v. Türkiye (No. 2)*

29. **Background:** In 2016 Selahattin Demirtaş, co-chair of the pro-Kurdish party HDP, was arrested on terrorism-related charges. The ECtHR found his detention violated Articles 5, 10, and 18.

30. **ECtHR Ruling:** The Court emphasized the need for his immediate release, citing concerns over the restriction of political freedoms.

31. **Current Status:** Turkish authorities have not complied with the ruling, as Demirtaş remains in detention, underscoring the government's reluctance to address political dissent.

The international community, including human rights organizations, has condemned the verdict, stating it undermines democracy and the rule of law in Türkiye. The ECtHR has found that the basis for the convictions is similar to the grounds previously deemed insufficient for detention, thus highlighting the ongoing political persecution. ECHR in the case of Demirtaş has found Türkiye also in violation of Article 18 along with Article 5 of the Convention. This was the second case after Osman Kavala, in which Türkiye was found in violation of Article 18, which explicitly means that the Turkish courts in these cases followed a political motivation rather than judicial. With this feature, Demirtaş case sets an important precedence to address the systemic problems of Turkish judiciary.

Case 3: *Yüksel Yalçınkaya v. Türkiye*

32. **Background:** The applicant, Yüksel Yalçınkaya, was a teacher at a public school in Kayseri. He was sentenced on 21 March 2017 by the Kayseri Assize Court to six years and three months' imprisonment for membership in an armed terrorist organization. The conviction was based on the applicant's use of an encrypted messaging application called "ByLock", having an account with Bank Asya and being a member of a trade union and an association. The applicant applied to the ECtHR on 17 March 2020, alleging that his trial and conviction had violated Articles 6, 7, 8, and 11 of the Convention.

33. **ECtHR Ruling:** The Grand Chamber of the ECtHR's judgment in the Yüksel Yalçınkaya case, dated September 26, 2023, stands as a landmark decision concerning prosecutions for membership in an organization following the July 15 coup attempt, particularly regarding the

use of ByLock as evidence. In this judgment, the Court identified violations of Articles 6, 7, and 11 of the Convention. Furthermore, the Court recognized that these violations were indicative of a systemic problem and issued specific findings under Article 46 of the Convention.

34. The decision reinforces the principle of "nullum crimen sine lege" (no crime without law), which is a cornerstone of legal certainty and fairness in criminal justice. This principle nullifies investigations and convictions that are not based on clear and existing legal grounds, highlighting the arbitrary nature of many prosecutions in Türkiye.

35. **Current status:** The Turkish Government has not taken any legislative steps to align judicial practices with the Yüksel Yalçinkaya judgment. Contrary to the Government's assertions, there has been no change in the jurisprudence or judicial practice to meet the requirements of the Yüksel Yalçinkaya judgment. Worrying public statements made by high-level political figures following the announcement of the Yüksel Yalçinkaya judgment, which publicly questioned the authority of the judgment, reinforced the perception that the Government is reluctant to ensure its proper, effective, and prompt implementation. On the contrary, these statements encouraged the judiciary to disregard the judgment, resulting in its non-implementation by the courts. Since the announcement of the Yüksel Yalçinkaya judgment, criminal investigations and prosecutions have continued for the same acts and under circumstances similar to those addressed in the judgment. Neither the Court of Cassation nor the Constitutional Court has yet to evaluate the binding or guiding nature of the Yalçinkaya judgment. Courts at all levels have concluded cases using the same approach and procedures as if the European Court had not rendered the Yüksel Yalçinkaya judgment. Furthermore, the Government has not developed any solution for final cases in which defendants were convicted for their lawful acts in violation of Yalçinkaya judgment.

5. Systemic Issues Hindering Compliance

36. Several factors undermine Türkiye's compliance with ECtHR judgments, including restrictive domestic laws that contradict ECHR standards. Türkiye's domestic laws, particularly the Anti-Terror Law and provisions in the Turkish Penal Code, conflict with the standards set by the ECtHR. As another example, Article 301 of the Turkish Penal Code criminalizes "insulting the Turkish nation," a provision that has been widely used to suppress free speech.

37. Türkiye's compliance with ECtHR rulings has been inconsistent, often shaped by the political context.

38. The lack of judicial independence, particularly in cases involving political figures and human rights defenders, poses a significant barrier. The judiciary's susceptibility to political influence has resulted in decisions that conflict with ECHR standards, undermining the execution of judgments.

39. The judiciary's susceptibility to political influence is evident in cases where the government directly intervenes in politically sensitive trials. The Judges and Prosecutors Council, responsible for appointments and disciplinary measures, lacks independence, as its members are appointed by the government and the President.

40. Credible reports highlight a clear lack of political will to fully implement ECtHR judgments, particularly in cases involving government critics, journalists, human rights defenders, Kurdish activists, and vulnerable or marginalized individuals and groups, including real or alleged members of the Gülen movement. Türkiye's persistent non-compliance has prompted the Council of Europe to initiate infringement proceedings, underscoring the gravity of the situation.

41. Another problem is the resistance of Turkish courts or the Parliament to comply with the case-law of the Constitutional Court, compounded by repeated verbal attacks on the Constitutional Court by public officials. For example, in the case of opposition MP Can Atalay (also one of the five defendants convicted in the Gezi park trial), whose release had been ordered by the Constitutional Court on 25 October 2023, the President of the Republic publicly expressed his dissatisfaction with its ruling. Moreover, the Istanbul 13th High Criminal Court, instead of re-examining the case, refused to reopen it and sent its decision to the Court of Cassation, which subsequently requested the opening of a criminal investigation into the judges of the Constitutional Court.

42. Lastly, another reason is the lack of a mechanism to monitor the implementation of ECtHR judgments by public officials, particularly judges and prosecutors, as well as the absence of accountability in cases of violations. Although the Council of Judges and Prosecutors has long had the authority to consider such violations when evaluating the promotion of judges and prosecutors, there is no public record of this power ever being exercised in cases where a judge or prosecutor's decisions have led to an ECHR violation.

6. Conclusion and Recommendations

43. Türkiye's execution of ECHR judgments remains a significant concern, especially in cases that challenge governmental authority or restrict fundamental freedoms. Türkiye's partial execution of ECHR judgments, particularly in cases involving freedom of expression, political dissent, and judicial independence, reflects systemic legal and institutional barriers. Although limited progress has been made in areas that do not cause systemic or widespread rights violations, particularly those that avoid political controversy or do not challenge the government's political agenda, the overall state of implementation is inadequate, highlighting systemic legal and political obstacles.

44. Recommendations **45.121** and **45.141** made by Czechia and France respectively, in the 3rd UPR Cycle, although they were supported by the Turkish Government, are **NOT IMPLEMENTED**.

45. As explicitly stated by the Council of Europe Committee of Ministers regarding the implementation of the Kavala judgment, Türkiye did not make the necessary legislative amendments on the structure of the Council of Judges and Prosecutors to ensure its independence from the executive (para 28 above). Thus, Recommendations **45.113** and **45.133** made by Austria and Norway respectively in the 3rd UPR Cycle, although they were supported by the Turkish Government, are **NOT IMPLEMENTED**.

46. This report urges the Turkish government to take concrete and meaningful actions to:

- Ensure full compliance with ECtHR rulings consistent with its human rights obligations as enshrined under Article 90 of the Turkish Constitution and Article 46 of the European Convention on Human Rights,
- Undertake comprehensive reforms, aligning its domestic legislation and judicial practices with international standards as urged also by the Council of Europe Committee of Ministers regarding the implementation of the ECtHR's judgment in Kavala case.

ANNEX: Information on Justice for Rule of Law Association and Volunteer Jurists Association

ⁱ <https://rm.coe.int/annual-report-2023/1680af6e81>

ⁱⁱ https://neighbourhood-enlargement.ec.europa.eu/document/download/f4b4f445-6f09-4130-95bc-04b1df4e8f46_en?filename=Türkiye_report_2020.pdf

ⁱⁱⁱ https://neighbourhood-enlargement.ec.europa.eu/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en?filename=Türkiye%202021%20report.PDF

^{iv} https://neighbourhood-enlargement.ec.europa.eu/document/download/ccedfba1-0ea4-4220-9f94-ae50c7fd0302_en?filename=T%C3%BCrkiye%20Report%202022.pdf

^v https://neighbourhood-enlargement.ec.europa.eu/document/download/eb90aefd-897b-43e9-8373-bf59c239217f_en?filename=SWD_2023_696%20T%C3%BCrkiye%20report.pdf

^{vi} <https://pace.coe.int/en/files/31772/html>

^{vii} <https://rm.coe.int/annual-report-2023/1680af6e81>

^{viii} <https://rm.coe.int/as-mon-2024-16-information-note-the-honouring-of-obligations-and-commi/1680b19600>

^{ix} <https://search.coe.int/cm/eng?i=0900001680b192a0>