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Good Faith, Bad Faith, and the Limits of Enforcement

Türkiye's Strategic Resistance before the ECtHR under Article 18

Author: Dilara Alpan

Supervisor: Florence Benoît-Rohmer

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ABSTRACT

The European Court of Human Rights found Türkiye in violation of Article 18 in *Demirtaş (no. 2)*, *Kavala*, and *Yüksekdağ Şenoğlu* for politically motivated detentions. Despite these rulings, the applicants remain imprisoned.

This thesis examines how Türkiye has exploited the Committee of Ministers' supervision system through formal compliance and strategic evasion. It argues that the Council of Europe's enforcement tools fail when faced with bad-faith resistance by authoritarian-leaning states.

Keywords: Article 18, Türkiye, political detention, human rights, enforcement, authoritarianism, symbolic compliance, Committee of Ministers.

L'hypocrisie est un hommage que le vice rend à la vertu

— François de La Rochefoucauld, *Maximes*

1. Introduction and Theoretical Framework

In recent years, the enforcement mechanism by the Committee of Ministers (hereinafter CM) regarding the judgments of the European Court of Human Rights (hereinafter the Court, ECtHR) has become a cause for concern. Although the Council of Europe (hereinafter CoE) ecosystem has a rather advanced judicial body under Article 46 § 1, the supervisory role of the CM still rests on a presumption of good-faith cooperation and democratic convergence among its member states in line with the principle of subsidiarity.[1]

Arguably, since 2010, the Court has increasingly identified politically motivated detentions as violations of Article 18. Türkiye, unfortunately, was subject to three textbook examples of these violations, namely: the landmark rulings in *Selahattin Demirtaş v. Turkey (no. 2)*, *Osman Kavala v. Turkey*, and *Figen Yüksekdağ Şenoğlu and others v. Turkey*.[2] In all three cases, the Court ruled that the pre-trial detentions of the applicants pursued the ulterior motive of stifling pluralism. Mehmet Osman Kavala, Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu were detained almost a decade ago and remain imprisoned at the time of writing.

These cases are not only referenced in legal contexts as ECHR literature, but also in political science works, as regrettable examples of the use of arbitrary detention to suppress dissent.[3] While the legal significance of these cases is widely acknowledged both academically and institutionally, this thesis concentrates on understanding Türkiye's *chronological and substantive* responses to the final judgments tracing the evolving tactics of Turkish judicial and political authorities.

1.1.Research question & legal relevance

This thesis is guided by a central research question: How did Türkiye find a way to push the limits of the Committee of Ministers' enforcement mechanism in responses to politically motivated detention cases?

At first glance, the question appears to concern a specific legal issue: the ongoing failure of actual implementation of Court's judgments. However, its significance goes far beyond these individual cases. What is at stake is the fragility of an enforcement regime that continues to

[1] Subsidiarity refers to the principle that national authorities have the primary responsibility for implementing the Convention, with the ECtHR acting as a subsidiary mechanism. This principle was formally codified through Protocol No. 15, which entered into force in August 2021, and has since become a key reference point in debates on the margin of appreciation and execution of judgments. For the full text, see: https://www.echr.coe.int/documents/protocol_15_eng.pdf.

[2] *Selahattin Demirtaş v Turkey (no 2)* [GC], no 14305/17, 22 December 2020; *Osman Kavala v Turkey*, no 28749/18, 10 December 2019; *Yüksekdağ Şenoğlu and others v Turkey*, no 44821/17, 3 April 2023.

[3] Carolyn Ferstman, *'Deterring Dissent'*, in Conceptualising Arbitrary Detention: Power, Punishment and Control (1st edn, Bristol University Press 2024) 145.

rely on assumptions of constructive dialogue, transparency, and mutual trust. These assumptions fall short in the face of deliberate obstruction.

This problem becomes particularly visible in the Demirtaş, Kavala, and Yüksekdağ cases. In each, the Court concluded that the applicants—political figures or human rights defenders—had been detained with the ulterior purpose of silencing opposition. These detentions were not administrative mishaps or mere violations of Article 5, but deliberate efforts to undermine the most basic democratic principles with hidden motives. As such, they reveal the limits of the CM's supervisory model, both legally and politically. Also, procedurally and normatively. They also raise a far more worrying question: what can be expected from an international system when a state systematically undermines the very tools intended to secure its compliance?

This question is also normatively relevant for broader debates on the future of international human rights regimes. If the Council of Europe, as arguably the most institutionalised regional human rights system, cannot ensure compliance in obvious cases of bad faith, then its capacity to function as a normative anchor should be considered, in jeopardy.

1.2.Methodology and sources

This thesis adopts a qualitative and case-based methodological approach involving close textual and chronological analysis of three landmark Article 18 judgments delivered by the ECtHR against Türkiye. These are the only cases in which the Court found the applicants' pre-trial detentions breached Article 18, in conjunction with Article 5 of the Convention. There have been other cases against Türkiye, where the applicants claimed that they had been subjected to a politically motivated detention; however, even when ruling an Article 5 violation, the Court has not found a violation in terms of Article 18, or did not see it necessary to examine that claim.[4]

Despite the judgments and CM's following enhanced supervision process, all three individuals remain in prison—some under reconfigured charges, others through prolonged pre-trial detention on new allegations derived from the same factual events previously condemned by the Court.

The goal of the methodology is to portray Türkiye's responses—legally, rhetorically, and politically—after the finalisation of these judgments. To this end, the idea here is to provide the state's step-by-step analytical strategy. Firstly, the events and judicial decisions leading to the ECtHR's judgments and judgments will be examined. Secondly, all available documents generated in the CM's supervision process will be reviewed. These materials will be analysed chronologically to map how Türkiye has positioned itself vis-à-vis each ruling, including the CM's engagement, or lack thereof, with these tactics that appear primarily planned to mimic substantive compliance.

In each case, the Turkish state has consistently submitted formal documents purporting to comply with the judgments to each and every document in the CM's process, while simultaneously resorting to evasive tactics at the domestic level. These tactics tellingly involve a series of new indictments based on facts already adjudicated in detail by the Court. Even fragmenting the legal process across various courts and accusations that allow for continued detention, while giving the illusion of independent judicial oversight at national courts.[7] Details of each case will be addressed in the upcoming sections. This thesis closely follows these legal developments and juxtaposes them against the timeline of CM reviews, aiming to show

[4] See *Sabuncu and Others v Turkey*, no 23199/17, 10 November 2020; *Şık v Turkey (no 2)*, no 36493/17, 24 November 2020; *Ahmet Hüsrev Altan v Turkey*, no 13252/17, 13 April 2021.

whether the CM's current mechanism is capable of responding effectively to highly calculated resistance of this nature.

Primary sources consist of ECtHR judgments, CM official records such as decisions, interim resolutions, meeting minutes, and communications from the Turkish government as well as the applicants. Most importantly, to demonstrate the developments at the national level, the relevant domestic judicial decisions, public prosecutor statements, and legislation will serve as key resources. In addition, the author had the opportunity to attend the domestic hearings in the Kavala case as an independent trial observer, which has further informed the analysis.

The aim is to provide a dual-layered analysis via this corpus of documents. The first is the legal part, which the Court and CM formally require, and the latter is the political-strategic part of how Türkiye 'manipulates' those requirements. Considering the political nature of the violations, the thesis does not treat law and politics as separate realms but rather examines how legal compliance might be shaped by domestic political discourse. It heavily relies on two concepts of *strategic legalism* and *compliance avoidance* to demonstrate Türkiye's tactics not as isolated mishaps but the way that law may be instrumentalised for political motives. [5]

Ultimately, the methodological contribution of the thesis lies in showing how reclassification of charges based on same events, is used by the Turkish state to manage the appearance of compliance while maintaining its political agenda. Despite superficial signs of cooperation, the current situation of the three applicants—years after the Court's judgments—stands as a blunt empirical indicator of non-compliance.

1.3.Structure of the thesis

This thesis consists of four substantive chapters following the introduction. Chapter 2 outlines the legal framework, focusing on Article 18 jurisprudence and the CM's supervisory mandate. Chapter 3 traces the timeline of events and CM interventions in the three selected cases, analysing Türkiye's legal responses and the structural weaknesses they reveal. Chapter 4 shifts to the domestic level, examining how legal tactics were employed to circumvent compliance, namely the reclassification of the charges. The conclusion synthesises the findings and reflects on their broader implications for the Council of Europe's enforcement regime.

2. Legal Framework

2.1.The ECtHR and Article 18: Legal scope and interpretation

At the core of this thesis lie politically motivated violations. These violations have been identified on the basis of Article 18 of the Convention. Clearly, this rule specifies that no restriction on the rights and freedoms in the Convention can be applied for any purpose other than those for which they have been prescribed. The scope of the rule is inherently linked to the motives of national authorities. Unlike other articles, Article 18 focuses on whether the restriction was applied in good faith and for the permitted purpose rather than the legality or proportionality of a restriction.

The provision is not autonomous or independent, and must be invoked in conjunction with another substantive article, very similar to Article 14.[6] This dependent character limits its application but enhances its function as a safeguard against authoritarian practices masked as lawful state action. Initially, the ECtHR treated Article 18 cautiously, rarely finding violations

[5] See Mikael Rask Madsen, 'Rebalancing European Human Rights: Has the Brighton Declaration Engendered a New Deal on Human Rights in Europe?' (2018) 9(2) *Journal of International Dispute Settlement* 199; Zafer Yılmaz, 'Erdoğan's Presidential Regime and Strategic Legalism: Turkish Democracy in the Twilight Zone' (2020) 20(2) *Southeast European and Black Sea Studies* 265.
[6] *Merabishvili v Georgia* [GC], no 72508/13, 28 November 2017, para 289.

and often sidestepping claims of political motivation, likely due to the political sensitivity such findings entail. However, over time, particularly since the 2010s, the Court has gradually developed a more structured interpretative approach. This progress has even been referred to as the renaissance of the article.[7]

Especially, with the Grand Chamber judgment in *Merabishvili v. Georgia,* the Court expressed its need to clarify the case law and lay out a more recent approach to Article 18, as there are relatively few cases in which complaints under the provision have been thoroughly examined.[8] This judgment marked a new and more relevant stance. Before, the Court has relied on the general assumption that national authorities act in good faith, and this can only be rebutted if the applicant proves that the real purpose behind the interference was not the one permitted under the Convention.[9] The Court held that an ulterior purpose does not need be the only or even dominant motive, and, that it is sufficient that it is one of the motives behind the measure.[10] The Court adopted *a plurality of purposes* test and acknowledged that bad faith or political motivations may be inferred from circumstantial evidence, including patterns of judicial decisions, public statements, and the broader political context.[11] This flexible standard marked a shift from the earlier restrictive approach and opened the door for applicants to demonstrate abuse of power without having to prove exclusive intent.[12]

The first significant example where Article 18 was applied in a meaningful way, might have been the *Gusinskiy v. Russia* judgment, in which the Court pointed out that the applicant's detention for alleged financial crimes served the ulterior motive of pressuring him to transfer his media assets.[13] Arguably, a move obvious application came later in *Ilgar Mammadov v. Azerbaijan*, where the Court found that the opposition politician's arrest lacked reasonable suspicion and served the ulterior purpose of silencing dissent and intimidation.[14] It can be argued that this is the the first full Article 18 violation judgment that sets a precedent for similar politically motivated detention cases.

Subsequent cases reinforced this trajectory. In *Tymoshenko v. Ukraine* and *Lutsenko v. Ukraine*, the Court, again, identified motives of political persecution, but without a formal Article 18 violation.[15] The decisive consolidation of the Court's approach came later with the *Selahattin Demirtaş v. Turkey (No. 2)* judgment, where the Grand Chamber ruled that the prolonged pre-trial detention of a prominent opposition leader pursued a political aim: stifling pluralism and limiting democratic debate.[16] The Court relied on many different indicators, including the timing of the detention, public statements by state officials especially from the president, and the absence of credible legal reasoning in domestic decisions. It stressed that the Turkish authorities' continued response could not be seen as a good-faith application of criminal law, but rather as part of a broader strategy to remove a key Kurdish opposition politician.[17]

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[7] Felix Krempel, *The Renaissance of Article 18 ECHR: A Human-Rights-Based Counter Mechanism to Rule of Law Backsliding and the Rise of Undemocratic Tendencies in Europe* (2023).
[8] See n 6.
[9] ibid 25.
[10] ibid 26.
[11] ibid 27.
[12] ibid 27.
[13] *Gusinskiy v Russia*, no 70276/01, 19 May 2004.
[14] *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, 22 May 2014.
[15] *Tymoshenko v Ukraine*, no 49872/11, 30 April 2013; *Lutsenko v Ukraine*, no 6492/11, 3 July 2012.
[16] *Demirtaş v Turkey (no 2)* [GC].
[17] *Demirta v Turkey (no 2)* [GC], para 432.

This was reaffirmed in *Osman Kavala v. Turkey*. Here, the Court concluded that the detention of the human rights activist pursued the aim of silencing him and discouraging and intimidating civil society in a broad manner.[18] The Court referred to the inconsistency of the legal charges, the political nature of the language used at domestic courts, and the repeated introduction of similar accusations.[19]

These judgments are projections of the particular relevance of Article 18 in cases involving Article 5, the right to liberty. While a state may claim that a detention is lawful under domestic criminal procedure, Article 18 allows the Court to examine whether such detentions are in fact instruments of political repression. The conjunction of Articles 5 and 18 thus becomes a powerful tool to identify the misuse of criminal law to silence openly dissenting figures.

In the meantime, Article 18 violations have broader implications beyond individual detentions of opposition. These findings reflect deeper problems in the rule of law and the politicization of the judiciary. The identification of ulterior motives in judicial or executive bodies often suggests systemic problems in a democracy. As such, Article 18 is increasingly described as a legal and formal way to assess authoritarian tendencies within the Convention framework. While the ECtHR avoids making overly political commentary in the judgments, its reasoning in Article 18 cases inevitably identify structural deterioration in the domestic legal order.

Nonetheless, there are clear limitations to the reach and effectiveness of Article 18. The evidentiary standard, even though the Court had adopted a more relaxed approach, still places a significant burden on applicants. Also, the political sensitivity of such cases understandably leads to restrained judicial language or even reluctance to find violations. Finally, as observed in this thesis, even when the Court actually finds a violation, the enforcement part may remain uncertain.

In short, Article 18 has evolved from an overlooked rule to a meaningful and dynamic legal provision, in a way, exposing the abuse of power under the illusion of justified aims. Its interpretation has matured over time, and, it now serves as a critical lens through which the Court examines politically motivated repression, specifically in detention cases.

2.2. The Committee of Ministers under Article 46: Mandate, powers, and procedures

The CM has the competence and the duty to supervise the implementation following the finalization of a judgment, in accordance with Article 46 of the Convention as amended by Protocols No. 11 and No. 14.[20] Officially, this function ensures the effectiveness of the Convention system, enabling the Court's judgments to transform into consequential outcomes at the domestic level, other than only the payment of just satisfaction under Article 41.[21] Article 46 § 1 affirms that "[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties." Paragraphs 2 to 5 of Article 46 frame the procedural aspects for CM supervision, such as tangible measures in case of non-implementation.

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[18] *Kavala v Turkey*, para 230.

[19] ibid.

[20] See Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 46; Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 1 November 1998); Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 1 June 2010).

[21] See Committee of Ministers, 'Recommendation No R (2000) 2 of the Committee of Ministers to Member States on the Re-Examination or Reopening of Certain Cases at Domestic Level Following Judgments of the European Court of Human Rights' (19 January 2000); Committee of Ministers, 'Recommendation Rec (2004) 6 of the Committee of Ministers to Member States on the Improvement of Domestic Remedies' (12 May 2004).

The exercise of the powers of the CM is governed by the Rules of the CM for the supervision of the execution of judgments and of the terms of friendly settlements. The supervisory role of the CM includes both individual and general measures. While individual measures focus on addressing the applicant's claims—usually via compensation or retrial in national courts—general measures are intended to prevent similar violations from occurring in the future, often requesting to make changes of national legislation or practice at the administrative or the judiciary level.[22]

The proceedings are followed by the CM, based on the Rules adopted for the supervision of execution, which are periodically updated.[23] Monitoring these measures is carried out through DH meetings — a specific format of the Ministers' Deputies meetings — dedicated exclusively to supervising the execution of the Court's judgments and decisions, in four three-day sessions each year. This mostly consists of assessing action plans and reports submitted by states engaging precious dialogue with national authorities, NHRIs, NGOs, and other civil forums to encourage compliance during the procedures.[24]

Over time, the powers of the CM have evolved, especially with the entry into force of Protocol No. 14 in 2010. Accordingly, paragraph 4 of Article 46 introduced the so-called the infringement procedure, providing the CM to refer a case back to the ECtHR for a follow-up assessment. [25] If it is evident that any state is refusing to abide by a final judgment, this referral depends on a two-thirds majority vote. This new procedure aims to ensure the implementation of the Court's rulings is respected. As a result, under Article 46 § 5, the Court may find a breach of Article 46 § 1, thereby confirming the state's failure to comply and increasing political pressure for execution.

Also, at their 1092nd meeting, the Deputies introduced the principle of the twin-track approach where all cases are either placed under "standard" or "enhanced" supervision, depending on the severity of the violation or the structural nature of the violations involved.[26] Similar to the cases reviewed in this thesis, the enhanced procedure is reserved for complex cases such as those involving systemic human rights violations, or politically motivated violations under Article 18 of the ECHR.

Also, the CM, principally, does not have the competence to operate as a judicial body. The monitoring system is limited and, does not include the modification of the Court's judgments or adjudication of new claims. Its role is fundamentally political and diplomatic, relying heavily on dialogue and peer pressure among member states. Nevertheless, the CM's decisions, whether it be interim resolutions or public statements— are supposed to have a significant impact on the practice of a state, particularly when combined with civil society engagement and media coverage.

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[22] Council of Europe, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights: 2023 Annual Report* (Council of Europe 2024).
[23] Committee of Ministers, *Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements* CM/Del/Dec(2006)964/4.4-app4consolidated (adopted 10 May 2006, amended 18 January 2017 and 6 July 2022).
[24] See Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements (adopted 10 January 2001, amended 4 May 2022).
[25] See Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 46(4); Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 1 June 2010).
[26] Committee of Ministers, *Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements* (adopted 10 May 2006, amended 18 January 2017) Rule 4 https://rm.coe.int/16806f5f97.

While lacking coercive powers, its role is essential in securing the rights affirmed by the Court, the Committee of Ministers under Article 46 provides the enforcement arm of the ECHR ecosystem. The Committee aims to secure that the ECtHR judgments are not merely declaratory but result in material change within domestic levels, via a combination of mostly political oversight, and cooperative mechanisms with minor legal obligations.

2.3.Legal standards for compliance and infringement

As explained, Article 46 outlines the legal standards governing compliance with the Court's judgments. This compliance does not have a rigid definition; rather, it points to the prevailing legal standard of *full and effective execution.*[27] States have the burden to address the root causes of violations in their legal systems. In light of the increased importance recently attributed to the principles of subsidiarity and the margin of appreciation by the ECHR ecosystem, compliance is assessed accordingly. This does not mean unlimited discretion. States must act in good faith, demonstrating that the measures they adopt are capable of achieving the result required by the Court's judgment.[28]

Notably, the most *severe* legal response was introduced as the *infringement procedure* under Article 46 § 4 in cases of non-compliance where the Grand Chamber hears the proceedings, unable to question the finding of violations before. The infringement procedure offers a quasi-judicial layer of accountability, therefore, underlines the legal nature of compliance obligations.[29] However, the value of the procedure supposedly lies in the political and reputational pressure via the threat of suspension of voting rights or total compulsion from the Council under Article 8 of the Statute.[30] Therefore, it sets a framework of mere cooperative enforcement, relying on good faith, transparency, and interstate dialogue. The legal threshold for infringement requires a clear finding that the state's conduct has undermined the authority of the judgment and the Court's role in the Convention system.[31]

This was first used in the *Ilgar Mammadov v. Azerbaijan* case, where the Grand Chamber ruled that there has been a violation of Article 46 § 1 on the grounds that Azerbaijan had refused to release the applicant despite a clear judgment.[32] Similarly, as one of the focal points of this thesis, infringement proceedings were used concerning the refusal to release in *Kavala v. Turkey.*[33] This case, unfortunately, constitutes one of the text book examples of non-compliance even after the infringements procedure.

As it will be argued in the thesis, the Convention ecosystem lacks coercive enforcement mechanisms. Therefore, the evolving practice of the CM and the jurisprudence of the ECtHR might be in a vulnerable position. The Court's declaration of violations is at risk of not being translated into real and effective protection.

3. Türkiye's Non-Compliance with Article 18 Judgments: Legal Analysis

3.1.Overview of Article 18 cases

As outlined above, the only three judgments in which the Court has found a violation of Article 18 against Turkey are *Kavala v. Turkey*, *Demirtaş v. Turkey (no. 2)*, and *Yüksekdağ Şenoğlu*

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[27] *Scozzari and Giunta v Italy* App no 39221/98, 13 July 2000 para 249.
[28] Helen Keller and Barbara Marti, 'Reconceptualizing Implementation: The Judicialization of the Execution of the European Court of Human Rights' Judgments' (2015) 26(4) *Eur J Intl L* 829, 830.
[29] Council of Europe, CDDH Report (2021) on the implementation of Article 46.
[30] Michael O'Boyle, Paul Mahoney and Rachael Kondak, *Law of the European Convention on Human Rights* (OUP 2021) 201.
[31] ibid 201.
[32] *Ilgar Mammadov v Azerbaijan* (infringement proceedings) [GC], App no 15172/13, 29 May 2019.
[33] *Kavala v Turkey* (infringement proceedings) [GC], App no 28749/18, 11 July 2022.

and others v. Turkey. The following sub-sections will provide a case-by-case analysis of these judgments, along with the developments that followed their finalisation. While the *Yüksekdağ Şenoğlu* judgment concerns a total of thirteen applicants, the analysis will only focus on Yüksekdağ, the only applicant who remains imprisoned at the time of writing. Accordingly, the examination of this judgment will concentrate on her individual situation and the government's execution efforts with regard to her case.

3.1.1. The *Kavala v Turkey* judgment

According to the ECtHR judgment, Mehmet Osman Kavala is a businessperson and human rights defender in Türkiye who has been involved in founding numerous NGOs and civil society movements.[34] The judgment also refers to written observations by the then Commissioner for Human Rights, who described Kavala as a reliable and longstanding partner of international human rights bodies, consistently viewed as professional and non-violent by her office.[35]

Kavala was initially taken into police custody in Istanbul, on 18 October 2017, for allegedly committing two offences under the Turkish Criminal Code (hereinafter TCC): Article 312, namely *attempting to overthrow the Government* in connection with the Gezi Park protests of May–September 2013, and Article 309 for *attempting to overthrow the constitutional order* in relation to the attempted coup of 15 July 2016. While both events are well known, a brief clarification may still be helpful to provide brief context. The Gezi Park protests began as an environmental protest and transformed into one of the largest anti-government movements in Türkiye's recent history[36]—whereas the 15 July coup attempt of the Fethullah Gülen movement, was a failed military takeover that violently resulted in hundreds of deaths and led to severe measures on alleged dissidents. [37]

Kavala was placed in pre-trial detention by the Istanbul 2nd Criminal Judgeship of Peace within the scope of criminal investigation (no. 2017/196115), on 1 November 2017.[38] The prosecution alleged that Kavala orchestrated the Gezi Park protests as a violent attempt to overthrow the government by maintaining extensive contacts with foreign actors—particularly Professor Henry J. Barkey, an American academic, who was suspected of involvement in the 2016 coup attempt relying on mobile signal data records showing that he and Kavala had been at the same location on 18 July 2016.[39] Other contacts included journalists, academics, human rights defenders, and members or heads of NGOs.

His appeal against this detention order was rejected, and he lodged an individual application before the Turkish Constitutional Court in December 2017.[40] Also, an application concerning this pre-trial detention was lodged with the ECtHR, later on 7 June 2018. On 5 February 2019, the criminal investigation concerning Article 309 (no. 2017/196115) and the investigation

[34] *Kavala v Turkey*, para 11.
[35] ibid para. 13
[36] Human Rights Watch, 'Turkey: Gezi Park Protests: Brutal Denial of the Right to Peaceful Assembly in Turkey' (HRW, 2 October 2013) 5–9 https://www.hrw.org/news/2013/07/12/turkey-gezi-park-protests-brutal-denial-right-peaceful-assembly accessed 26 May 2025.
[37] BBC News, 'Turkey's Failed Coup Attempt: What Happened?' (16 July 2016) https://www.bbc.com/news/world-europe-36816045 accessed 26 May 2025.
[38] Diken, 'İşadamı Kavala Tutuklandı: Suçlama Hükümet ve Anayasal Düzeni Kaldırmaya Teşebbüs' https://www.diken.com.tr/isadami-kavala-tutuklandi-suclama-hukumet-ve-anayasal-duzeni-kaldirmaya-tesebbus/ accessed 26 May 2025.
[39] *Kavala v Turkey*, para 37.
[40] Between November 2017 and early 2019, Kavala's detention status was reviewed multiple times.

under Article 312 were seperated into two investigations marking the first fragmentalisation of the proceedings.[41]

On 19 February 2019, the Istanbul Chief Public Prosecutor's Office submitted an indictment against Kavala and 16 others,[42] for attempting to overthrow the government by force and violence during the Gezi Park protests, pursuant to Article 312 of the TCC seeking life sentences.[43] In the indictment, the Gezi protests were portrayed as being orchestrated with the support of foreign entities, most notably OTPOR and CANVAS, known for their role in training activists in nonviolent resistance strategies.[44] The prosecution alleged that the defendants—through NGOs such as Anadolu Kültür[45] and the Open Society Foundation[46]—organised and financed the protests by holding events, distributing materials, and inciting public unrest. The indictment, referred to the phone taps, surveillance footage, and financial records previously relied on in the detention order, and additionally cited a report by the Financial Crimes Investigation Committee (MASAK).[47]

The Turkish Constitutional Court on 22 May 2019, found Kavala's application concerning the lawfulness of his pre-trial detention admissible, but held that there had been no violation of his right to liberty and security.[48] While the majority accepted the prosecution's reliance on what it described as Kavala's international connections and public influence as sufficient to justify detention, the dissenting opinion of one judge underscored the lack of concrete evidence linking him to any violent acts.[49]

On 11 October 2019, Kavala was released by the prosecution's decision in the investigation (no. 2017/196115) concerning the Article 309 charges, but he remained in pre-trial detention under the Article 312 charges.[50]

In December 2019, the ECtHR delivered its judgment in *Kavala v. Turkey*. The Court found a violation of Article 5 § 1 due to the lack of reasonable suspicion, and a violation of Article 5 §

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[41] *Kavala v Turkey*, para 45.

[42] Ali Hakan Altınay, Ayşe Mücella, Ayşe Pınar Alabora, Can Dündar, Çiğdem Mater Utku, Gökçe Yılmaz, Handan Meltem Arıkan, Hanzade Hikmet Germayanoğlu, İnanç Ekmekçi, Memet Ali Alabora, Mine Özerden, Serafettin Can Atalay, Tayfun Kahraman, Yiğit Aksakoğlu, Yiğit Ali Ekmekçi.

[43] *Kavala v Turkey*, para 45.

[44] Anadolu Agency (translated), 'Foreign Connections of Kavala and Alabora Included in the Indictment', originally published in Turkish as 'Kavala ile Alabora'nın Dış Bağlantıları İddianamede' (Anadolu Agency, 4 March 2019) https://www.aa.com.tr/tr/turkiye/kavala-ile-alaboranin-dis-baglantilari-iddianamede/1402482 accessed 27 May 2025.

[45] Anadolu Kültür, 'About Us' (Anadolu Kültür) https://www.anadolukultur.org/en/who-we-are/ accessed 27 May 2025.

[46] Open Society Foundations, 'About Us – Turkey' (Open Society Foundations) https://www.opensocietyfoundations.org/who-we-are/offices-foundations/open-society-foundation-turkey accessed 27 May 2025.

[47] *Kavala v. Turkey*, paras 147–149, 153–154, 230.

[48] Turkish Constitutional Court, *Mehmet Osman Kavala*, App no 2018/1073, 22 May 2019 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/1073.

[49] The dissent emphasized that the authorities had failed to demonstrate a strong indication that Kavala had engaged in violent acts or supported them, which is a necessary condition for such a severe restriction on liberty. It noted that activities such as supporting peaceful protests, organizing public events, distributing protective equipment like gas masks, and making political statements about democratic reform could not themselves amount to criminal evidence. The dissent also criticized the use of indirect associations—such as phone calls, photographs, and foreign contacts—as inadequate to establish a connection between Kavala and the alleged attempt to overthrow the government. In the absence of concrete, individualized evidence linking him to violence, the dissent concluded that the grounds for detention were arbitrary and lacked sufficient factual basis.
Mehmet Osman Kavala, dissenting opinion paras. 45–60.

[50] Despite international concern over the fairness of the trial and the lack of direct evidence of criminal conduct, all defendants were charged under Article 312 with terrorist intent, invoking Turkey's broad Anti-Terrorism Law.

4 for failing to provide timely judicial review, which cannot be justified by the special circumstances of the state of emergency. By a 6-1 majority, the Court also held that Article 18, in conjunction with Article 5 § 1, had been violated. It emphasized that Kavala's detention lacked any genuine legal basis, was politically motivated, and aimed to silence both him and other human rights defenders. Relying on several public statements by the President of Türkiye that appeared to incriminate the applicant.[51]

The Court's reasoning under Article 5 § 1 involved a detailed examination of the evidence used to justify the Kavala's detention. That evidence has to be analysed closely, given its relevance to the government's subsequent claims which will be discussed later. The Court clearly indicated that neither the bill of indictment nor the detention order contained any evidence that Kavala had used, instigated, or supported violence, as required under Article 312. The prosecution's claim that a group of civil society actors—allegedly led by Kavala and supported by foreign actors—had formed a *sui generis* structure aiming to overthrow the government was found to rest on vague and unverifiable assumptions. The Court also noted concerning the Article 312 charge that the statements of a key witness, M.P., were basically conspiracy theories, rather than demonstrating any criminal activity.[52] Several telephone conversations with journalists, cultural organisers, and NGO leaders during or after the Gezi events were considered lawful, as were subsequent meetings with foreign diplomats and civil society representatives. [53] The Court dismissed the evidentiary value of the applicant's participation in interviews related to a 2017 EUTCC delegation visit—well after the events in question—as well as various private message exchanges, none of which pointed to violent conduct.[54] Regarding the charge under Article 309, the only fact invoked by the prosecution was the Kavala's brief and incidental greeting with H.J. Barkey, an American academic, in a restaurant shortly after the coup attempt.[55] The Court held that this interaction could not serve as a basis for a reasonable suspicion of involvement in an attempt to overthrow the constitutional order. The acts attributed to the applicant were considered in total either lawful, isolated and unrelated, or clearly linked to the exercise of Convention rights, and in any case, non-violent.

Following the ECtHR judgment, on 18 February 2020, the Istanbul 30th Assize Court unanimously ruled for the acquittal and release of Kavala in the case known to the public as the Gezi Park Trial (no. 2019/74).[56] In its reasoned judgment, the court found that the phone transcripts in the case file were not legally admissible evidence and that there was no proof Kavala had financed the Gezi Park events or that any materials he provided were used for violent purposes, emphasizing the lack of concrete statements from witnesses and the absence of incriminating findings in the MASAK report, and stated that there was no legal, concrete, or conclusive evidence to establish guilt for attempting to overthrow the Government.[57]

However, on the very same day and before he could physically leave Istanbul's notorious detention facility, Silivri Prison, Kavala was immediately placed in pre-trial detention by the

[51] *Kavala v. Turkey*, para 229.
[52] ibid para 147.
[53] ibid para 150.
[54] ibid para 152.
[55] ibid para 154.
[56] See 'Chronology' (Osman Kavala Official Website) https://www.osmankavala.org/en/judicial-process/chronology accessed 27 May 2025.
[57] *Kavala v Turkey* (infringement proceedings) [GC], para 10.

Istanbul 8th Criminal Judgeship of Peace pursuant to Article 309 in a separate investigation (no. 2017/196115), from which he had previously been released.[58]

On 9 March 2020, the Istanbul 10th Criminal Judgeship of Peace issued another detention order, this time, for espionage charges pursuant to Article 328 of the TCC,[59] in connection with the same investigation (no. 2017/196115). The prosecution and the judgeship relied on the fact that Barkey had engaged in espionage for foreign States, this time, citing his links to the Rumi Foundation in the U.S., his support for Fetullah Gülen, and his presence at a Büyükada meeting on 15 July 2016, where he reportedly acted nervously and made suspicious comments about the coup attempt.[60] This allegation, again, relied on phone records and witness statements indicated repeated contact between Barkey and Kavala, including shared cell tower signals on multiple dates and a confirmed meeting on 18 July 2016.[61] Notably, these interactions have been addressed in the Court's judgment in detail.[62]

Following this, on 20 March 2020, Kavala was once again released, this time under Article 309 charges, on the grounds that he had been held in pre-trial detention for more than two years without having been charged in that respect which had no effect, on the above-mentioned decision of 9 March 2020 in relation to the charge of military or political espionage.[63] Subsequently, a second individual application was filed with the Constitutional Court on 4 May 2020, arguing that the continuation of Kavala's detention amounted to a violation of his rights.[64]

Finally, on 11 May 2020, the government's request for the referral of the case to the Grand Chamber of the ECtHR was rejected, thereby rendering the decision final. The legal and political developments following the finalisation of the judgment will be elaborated in detail, in chronological order and under relevant sections, particularly within the CM's proceedings and the government's submissions.

3.1.2. The *Selahattin Demirtaş v Turkey* (No 2) judgment

Selahattin Demirtaş is the co-chair of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party, and has served as an elected member of the Turkish National Assembly, a prominent opposition figure, and a vocal critic of the government.[65] His influence extends far beyond Kurdish politics, making him one of the key figures in contemporary Turkish political landscape. This was underscored by the HDP's historic success in the June 2015 elections, when the party prevented the ruling Justice and Development Party (AKP) from securing a parliamentary majority for the first time since 2002.[66]

In May 2016, a very controversial and criticised amendment to the Constitution was adopted whereby parliamentary immunity was lifted in all cases where requests for its lifting had been transmitted to the National Assembly prior to the date of adoption of the amendment.[67] This controversial amendment was the result of a broader pattern of political and legal measures that had increasingly targeted Kurdish opposition figures in the years leading up to its adoption.

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[58] The Guardian, 'Turkey Re-Arrests Gezi Park Activist Hours After Acquittal on Terror Charges' (18 February 2020) https://www.theguardian.com/world/2020/feb/18/turkey-acquits-nine-activists-held-over-2013-gezi-park-protests accessed 27 May 2025.
[59] *Kavala v Turkey* (infringement proceedings) [GC], para 31
[60] ibid para 31.
[61] ibid paras 31-32.
[62] See n 56.
[63] *Kavala v Turkey* (infringement proceedings) [GC], para 34.
[64] See n 57.
[65] *Selahattin Demirtaş v Turkey* (No 2) [GC], paras 10–12.
[66] ibid para 25.
[67] ibid paras 40-44.

This context will be explained in detail, as it is crucial for understanding both the judgment and the subsequent events.

A peace process called the *Çözüm Süreci* between the Turkish government and the PKK was initiated at the end of 2012, officially introducing a new chapter in the state's approach to the ongoing Kurdish issue.[68] A turning point came during the events of 6 to 8 October 2014 when the ISIS' siege of the Kurdish-majority town of Kobane in northern Syria began in late 2014. As the Turkish government refrained from intervening or allowing effective support to reach the besieged Kurdish fighters across the border, large-scale protests took place across Türkiye, particularly in the southeast from 2 October 2014 onwards.[69] On 6 October 2014 three tweets were posted on the official HDP Twitter account, calling for protest expressing for solidarity with Kobane.[70] Large-scale protests erupted, resulting in the deaths of fifty individuals and injuries to 772 others, including 331 security personnel.[71] Large number of vehicles and buildings, including hospitals and schools, were damaged. Following this unrest, criminal investigations led to the arrest of 4,291 people, of whom 1,105 were placed in pre-trial detention.[72]

On 22–23 July 2015, two police officers were killed in a terrorist attack, triggering the collapse of the ceasefire. [73] Armed conflict resumed between the security forces and the PKK, whose leadership called on people to take up arms, proclaim local self-rule, and threatened state officials in the region.[74] Amid this escalating violence, President Erdoğan gave a speech on 28 July 2015 declaring that 'the leaders of the HDP must pay the price.'[75] Shortly thereafter, between 10 and 19 August 2015, self-governance was declared in nineteen towns, prompting local governors to impose curfews. Trenches were dug and barricades erected to hinder the entry of security forces, hence the term 'trench events' (*hendek olayları*) used to describe this period.[76] In a speech on 18 December 2015, Demirtaş defended what he described as resistance against state operations, stressing that the struggle for self-governance and autonomy would continue and highlighting that important decisions would be made at the upcoming Democratic Society Congress (DTK) meeting. [77] About a week later, on 26 December 2015, Demirtaş marked his stance in support for self-governance during another public speech.[78]

The political rhetoric intensified as President Erdoğan, in speeches delivered between December 2015 and March 2016, repeatedly addressed that the self-governance discourse amounted to treason and called for immediate action to lift the immunity of opposition MPs, thereby reinforcing the government's determination to suppress opposition voices.[79]

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[68] ibid para 29.
[69] Amnesty International, *Kobane Protests in Turkey: Human Rights Failures* (Report, 7 July 2015) 5.
[70] ibid para 20.
[71] ibid para 21.
[72] Turkish Constitutional Court, *Selahattin Demirtaş*, App no 2016/25189, 21 December 2017, para 25.
[73] ibid para 33.
[74] ibid para 34.
[75] *Selahattin Demirtaş v Turkey* (No 2), para 29.
[76] ibid para 30.
[77] ibid para 35 (original in Turkish; English translation from the judgment): 'Those who try to downplay it by calling it [resistance of] ditches and holes should look back at history. There are tens of millions of heroes and brave people resisting against this coup. You are waging a war against the people. The people are resisting and will resist everywhere. Next week ... we will attend the extraordinary meeting of the Democratic Society Congress ... We will have intensive discussions and take important decisions concerning the processes of self-governance and autonomy and their operation in the political arena. We will implement them all.'
[78] ibid para 36.
[79] ibid paras 37-39.

As explained above, on 20 May 2016, the National Assembly passed a provisional constitutional amendment affecting parliamentary immunity.[80] Notably, this amendment was later subject to the Constitutional Court's review upon the request of several opposition MPs, but it was dismissed on procedural grounds.[81] The constitutional amendment affected a total of 154 of the 550 MPs at that time concerning fifty-nine from the CHP, fifty-five from the HDP, twenty-nine from the AKP and ten from the MHP.[82] It also concerned one independent member of parliament. On separate occasions, fourteen HDP MPs and one CHP MP were subjected to pre-trial detention within the scope of criminal investigations. [83]

Following the amendment, the Diyarbakır Chief Public Prosecutor's Office issued a decision to join Demirtaş's thirty-one separate criminal investigations together into a single case.[84] Between July and October 2016, he was summoned six times give a statement as part of this investigation Yet, he refused to appear, even declaring in a speech in April 2016 that no HDP MP would testify voluntarily, as an act of protest.[85]

On 4 November 2016, following the search of his home, he was taken into police custody. Later that day, he was placed in pre-trial detention by the Diyarbakır 2nd Judgeship of Peace under Articles 314 §§ 1 and 2 for *membership of an armed terrorist organisation* and Article 214 § 1 for *inciting others to commit a criminal offence*.[86] Given his senior position in the HDP, it was argued that the party's three tweets calling for protest, during the 6–8 October 2014 events, provided a strong suspicion that he committed, simultaneously with members of the PKK and KCK terrorist organisations, the offence of public incitement to commit an offence.[87] The decision thereby referred to tweets and statements from alleged PKK/KCK leaders between those dates, also calling for protest and campaigning in solidarity with Kobane.[88] And, the membership of a terrorist organisation charge was based on his attendance at the first and founding meeting of DTK (Democratic Society Congress) which is allegedly a body of KCK, in October 2007, together with mayors and members of the DTP (Democratic Society Party).[89] Also, his speech at the HDP offices in Diyarbakır on 9 October 2014,[90] another speech about the ongoing the peace process on 7 October 2014,[91] his press statement on 13 September 2015

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[80] Venice Commission, *Turkey: Opinion on the Suspension of the Second Paragraph of Article 83 of the Constitution (Parliamentary Inviolability)*, CDL-AD(2016)027 (Venice, 14 October 2016).
[81] Turkish Constitutional Court, App no 2016/54, Decision no 2016/117, 3 June 2016
[82] Venice Commission (n 81), para 35.
[83] *Selahattin Demirtaş v Turkey* (No 2), para 264
[84] ibid para 62 (noting that there were seven other sets of criminal proceedings pending against the applicant in the national courts at the time).
[85] HDP, 'April 2016 Parliamentary Group Meeting' (original in Turkish, 19 April 2016) https://www.hdp.org.tr/tr/nisan-2016-meclis-grup-toplantilari/9450/.
[86] *Selahattin Demirtaş v Turkey* (No 2), para 69.
[87] See n 6.
[88] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 22: "Our people must carry on the resistance they have started against this terrible and insidious massacre, by spreading it everywhere and at all times. Our people in the North [in the region of south-eastern Turkey] must give the Daesh gangs and their supporters no chance of survival. All the streets must be turned into the streets of Kobani and the strength and organisation of this historic and unique resistance must be developed further. From now on, millions of people must take to the streets and the crowds must flood to the border. All Kurds and all honourable people, friends and groups who are sympathetic [to our cause] must take action. Now is the time to develop and amplify the act of resistance. On this basis, we call upon our people, all groups that are sympathetic [to our cause] and our friends to embrace and amplify the Kobani resistance and we call upon all young people, particularly the Kurdish youth, to join the ranks of freedom in Kobani and to intensify the resistance."
[89] ibid para 70.
[90] ibid para 26.
[91] ibid para 70.

in Lice regarding the curfew orders;[92] another press statement on 18 December 2015 with other MPs,[93] his statements to the DTK on 26 December 2015,[94] and the speech on 26 March 2016, at the theatre hall of the Yenişehir Municipality Building[95] were all listed as evidence. 17 separate investigations concerning terrorism charges were joined to the present investigation.[96]

On the same day, eight other HDP MPs including Figen Yüksekdağ, were placed in pre-trial detention by the competent judgeships in various cities. Following the rejection of the initial appeal, an individual application was lodged before the Turkish Constitutional Court. His parliamentary mandate expired later on 24 June 2018.

On 11 January 2017, the indictment concerning the above-mentioned investigation on the October 2014 protests, was filed against Demirtaş for his several speeches and statements between 2012 and 2014 on multiple charges.[97] The charges were based on a series of public statements and political activities. including a speech delivered at the BDP offices in Batman

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[92] ibid para 70.

[93] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 22: 'Everywhere you carry out [security] operations is filled with an atmosphere of enthusiasm rather than fear and panic. Do you know why? [Because] these people are absolutely certain that they will triumph from the very first day. They are the defenders of an honourable, noble and dignified cause. We will not let cruelty and fascism win any more; this resistance will triumph. Those who try to downplay it by calling it [resistance of] ditches and holes should look back at history. There are tens of millions of heroes and brave people resisting against this coup. You are waging a war against the people. The people are resisting and will resist everywhere. Next week, on 26 and 27 December, we will attend the extraordinary meeting of the Democratic Society Congress in Diyarbakır. We will have intensive discussions and take important decisions concerning the processes of self-governance and autonomy and their operation in the political arena. We will implement them all.'

[94] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 70: 'The barricades and trenches are not the result of the Kurdish people's desire for self-governance; they were put up because the people who made plans for a massacre in Ankara began implementing those plans. What trench, what barricade? We can't play down the question. The resistance in the trenches and barricades [is driven by the same motive as] the resistance against fascism and massacres: the right to an honourable life. If one day someone refuses to accept this and discuss it and says he will lock up and bring to their knees anyone who thinks in this way ... 'Oh, they have put up barricades, but that's not much – what else can they do?' They criticise us because that's what people say. If we, the politicians, NGOs, workers' organisations, women's organisations, youth organisations, local authorities, can support self-governance, if we can achieve it step by step, we will solve this historic problem. This resistance will lead to victory. My thanks go to all our friends [, who are not letting us down], who are resisting, who are not crumbling, [and] all our comrades who, despite everything, are remaining by the people's side during this time. Once again, I repeat my promise of loyalty and affection towards our friends, their families and the martyrs from 7 to 70 who have put their lives at risk.'

[95] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 70: 'Not claiming a corpse is dishonourable; leaving a corpse on the ground is dishonourable. We are looking at [what is happening] with shame; we are truly ashamed. [They are saying:] 'Oh, you went to [express] your condolences', 'no, it was a member of parliament [from your party] who went', 'no, the other one went...'. Can there be fifteen million terrorists in a country? If you [accuse] everyone of terrorism, in particular if you [accuse] the Kurds, who are claiming [their] rights and freedoms, [and] if you say you are going to take the necessary action, [this] fifteen-million-strong people will resist against your fascist practices by all available means. [Against this background], resistance becomes legitimate. Otherwise, war is not legitimate, there is no legitimacy [in] war. Resistance is legitimate. The people will be obliged to pay a higher price, our young people will be obliged to pay a higher price [and] we, the politicians, can only look at what is happening with sorrow when our dearest [friends] are murdered before our eyes. Against this background, I trust that the Democratic Society Congress will revive the enthusiasm [from] the time of its creation.'

[96] All charges and investigation numbers are provided in *Selahattin Demirtaş v Turkey* (No 2), para 70

[97] Forming or leading an armed terrorist organisation (Article 314(1) CC); disseminating propaganda in favour of a terrorist organisation (15 counts, section 7(2) Prevention of Terrorism Act, Law no 3713); incitement to commit an offence (Article 214(1) CC); condoning crime and criminals (4 counts, Article 215(1) CC); public incitement to hatred and hostility (2 counts, Article 216(1) CC); incitement to disobey the law (Article 217(1) CC); organising and participating in unlawful meetings and demonstrations (3 counts, section 28(1) Meetings and Demonstrations Act, Law no 2911); failure to comply with orders by the security forces for the dispersal of an unlawful demonstration (section 32(1) Law no 2911).

on 27 October 2012 by urging people to close their shops and not to send their children to school as a protest aimed at securing the release of the PKK leader; remarks made during two demonstrations in Nusaybin and Kızıltepe on 13 November 2012 protesting the conditions of the PKK leader's detention;[98] and a speech at the BDP offices in Diyarbakır on 21 April 2013.[99] They also included various comments concerning the declarations of self-governance and the operations conducted by security forces; the applicant's active involvement in the establishment and activities of the DTK, which the prosecution considered to promote the PKK's views; his alleged role within the political wing of the KCK, as evidenced by digital documents and the records of intercepted telephone conversations, including a recommendation for him to attend a meeting at the CoE; and finally, statements made at the HDP offices on 9 October 2014 and in *Evrensel* newspaper on 13 October 2014, which allegedly confirmed that he had incited the violent acts of 6–8 October 2014.[100]

The Diyarbakır Assize Court accepted the indictment in February 2017, but the case was sent to the Ankara Assize Court for security reasons.[101] These proceedings, for practical reasons, are referred as the first set of proceedings by the CM documents.[102]

The Constitutional Court declared his application regarding this initial pre-trial detention inadmissible in December 2017.[103] His argument concerning the unlawful nature of the detention was declared inadmissible on the grounds of failure to exhaust domestic remedies. It further found that his claim regarding the unlawfulness of his pre-trial detention and the claim concerning restricted access to the investigation file were manifestly ill-founded. Lastly, the Court declared the claims that his pre-trial detention violated his rights to freedom of expression and to be elected and engage in political activity were also manifestly ill-founded. In the dissenting opinion of the sole judge, it was stressed that no sufficient justification for the detention, noting that alternatives had not been considered. It was argued that the flight risk claim should have been deemed not enough, highlighting Demirtaş's continued political activity and travel without ever fleeing over the last decade. The opinion concluded that, considering his political status, the detention violated his right to liberty and security as well as his electoral rights under the Constitution.

In parallel, Demirtaş was convicted by the Istanbul Assize Court, in a separate set of proceedings on 7 September 2018 for disseminating terrorist propaganda under Article 7/2 of the Prevention of Terrorism Act, on account of a speech he had given at a rally in Istanbul on 17 March 2013, receiving a four years and eight months' prison sentence.[104] The indictment

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[98] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 79: 'They said you couldn't put up the poster of Öcalan. Those who said it ... Let me speak clearly. We are going to put up a sculpture of President Apo. The Kurdish people have now risen up. With their leader, their party, their elected representatives, their children, their young and old, they are one of the greatest peoples of the Middle East.'

[99] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 79: 'The Kurdish movement used to see the war as a legitimate war of self-defence. Nowadays, if you have enough experience to resist [and] prevail using non-violent methods, it is not morally [and] politically right to use weapons. Today, those who criticise us also say that the Kurdish people would not exist, at least in Turkish Kurdistan, without the PKK movement. You could not speak of the existence of Kurds in Turkish Kurdistan. Without the coup in 1984 [the year of the first PKK attacks], without the guerrillas, no one today could speak of the existence of the Kurdish people; the Kurds had no other choice. At the time of the initial resistance in Şemdinli [and] Eruh [the first terrorist attacks by the PKK, carried out in the Şemdinli district in Hakkari and the Eruh district in Siirt on 15 August 1984], no one was aware of what was happening but the resistance has today created [the] reality of the [Kurdish] people. We have gained our identity.'

[100] ibid para 79.

[101] ibid paras 84-85.

[102] Committee of Ministers, *H/Exec(2021)4rev – Memorandum: Selahattin Demirtaş v Turkey (no 2)* https://hudoc.exec.coe.int/?i=HEXEC(2021)4REV-TUR-DEMIRTAS-ENG.

[103] Turkish Constitutional Court (Plenary), *Selahattin Demirtaş*, App no 2016/25189, 21 December 2017.

[104] *Selahattin Demirtaş v Turkey (no 2)* [GC], paras 109-110.

concerning this case was prepared in August 2016.[105] These proceedings are classified as the second set of proceedings.[106] On 4 December 2018, the Istanbul Court of Appeal upheld the first-instance judgment making the conviction final.[107] He began serving his prison sentence on 7 December 2018.

In the meantime, the Second Section of the European Court delivered a judgment on 20 November 2018.[108] The Court found that there had been no violation of Article 5 § 1 concluding that there was sufficient information in the investigation leading to reasonable suspicion to satisfy an objective observer that the applicant might have committed at least some of the offences for which he had been prosecuted. It unanimously found a violation of Article 5 § 3, holding that the Turkish courts had failed to provide sufficient grounds for his continued pre-trial detention, particularly regarding the risk of absconding, and had not adequately considered alternatives. The Court also found a violation of Article 3 of Protocol No. 1, emphasizing that his detention had deprived him of effectively discharging his parliamentary duties and thereby interfered with the free expression of the electorate's will. Finally, by six votes to one, it found a violation of Article 18 in conjunction with Article 5 § 3, concluding that Demirtaş's extended detention pursued an ulterior political purpose—namely, to stifle pluralism and limit democratic debate, particularly during the 2017 constitutional referendum and the 2018 presidential election. The Court also found, unanimously, that there had been no violation of Article 5 § 4 on account of the speediness of the Constitutional Court and did not consider it necessary to examine the case under Article 10. The case was referred to the Grand Chamber at the request of both parties.

Concerning the first set of proceedings, the Ankara Assize Court ordered his release from pre-trial detention on condition that he was not detained or convicted in other proceedings on 2 September 2019.[109] Following this decision, Demirtaş requested from the Istanbul Assize Court to deduct the time he had spent in pre-trial detention during the first set of proceedings in Ankara from the sentence imposed in the Istanbul case from the second set. On 20 September 2019, the Istanbul Assize Court allowed this request.[110]

On the very same day, despite the first set proceedings ongoing before the Ankara Assize Court, the Ankara Public Prosecutor's Office filed a request to the Ankara 1st Criminal Judgeship of Peace seeking the pre-trial detention of Demirtaş and Yüksekdağ in connection with a separate investigation (no. 2014/146757). This investigation, launched in 2014, once again addressed the events of 6 to 8 October 2014. The co-chairs, once again, were deemed responsible for triggering the unrest, acting on the instructions of the PKK/KCK terrorist organisation. However, with this decision, they were charged with different offences namely, undermining the unity and territorial integrity of the State under Article 302, as well as instigating various offences committed during the violence under Article 214 § 3.[111] These proceedings are referred to as the third set of proceedings.[112] And this detention order was later characterised

[105] BBC Türkçe, 'Demirtaş ve Önder Hakkında 5 Yıl Hapis İstemiyle İddianame' (12 August 2016) https://www.bbc.com/turkce/haberler-dunya-37057611 accessed 27 May 2025.
[106] See n 103.
[107] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 110.
[108] *Selahattin Demirtaş v Turkey (no 2)* App no 14305/17, Second Section, 20 November 2018.
[109] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 433.
[110] ibid para 115
[111] As explained in paragraph 116 of the *Demirtaş (no. 2)* judgment, the accusations included undermining the unity and territorial integrity of the State, incitement to commit murder in order to conceal an offence or evidence or to avoid arrest, incitement to commit robbery at night together with others to assist a criminal organisation, incitement to deprive another person of liberty through threats, violence and deception, and incitement to attempted murder for the purpose of concealing an offence or evading arrest.
[112] See n 103.

as Demirtaş's return to pre-trial detention by the ECtHR's Grand Chamber judgment.[113] Applications concerning this detention order of 20 September 2019, with connection to the initial one, was submitted directly to the ECtHR, as well as the Turkish Constitutional Court.

Following this, President Erdoğan made another public statement on the next day, in which he strongly incriminated Demirtaş and Yüksekdağ by linking them directly to the deaths during Kobane protests, insisting that they 'cannot be released'.[114] On 24 October 2019, an amendment allowing appeals for certain expression-related terrorism offences entered into force even effecting finalised decisions.[115] Relying on this, the Istanbul Assize Court, upon the appeal, ordered his release on 31 October 2019 in connection to the second set of proceedings, provided he was not detained in other proceedings.[116] However, he was detained from the third set of proceedings.

On 9 June 2020, the Constitutional Court ruled on five individual applications lodged by the applicant between 2017 and 2018, together under a single case (no. 2017/38610).[117] It found that his pre-trial detention, which had lasted more than two years on terrorism-related charges, violated his right to liberty and security. It also ruled that the domestic decisions that extended the detention failed to provide relevant and sufficient reasons with regards to his position as an MP, party leader, and presidential candidate.[118] It did not, however, address his second period of pre-trial detention that began in September 2019, as that was the subject of a *separate*, still pending application.[119]

Finally, on 22 December 2020, the European Court delivered its Grand Chamber judgment in *Selahattin Demirtaş v. Turkey (No. 2)*. This judgment can be considered a complete departure from the prior judgment. Most significantly, the Court concluded that the Turkish authorities had pursued an ulterior political purpose in detaining Demirtaş finding a violation of Article 18 in conjunction with Article 5.

The GC found that the constitutional amendment lifting parliamentary immunity lacked foreseeability and amounted to an *ad homines* measure targeting opposition members, particularly for their political statements referring to the Venice Commission's opinion.[120] The lack of clear interpretation the Article 83 of the Constitution by national courts did not comply with the requirement of the quality of law, the Court finds that there has been a violation of Article 10. Furthermore, the Court found that the broad interpretation of Article 314, which equates the exercise of freedom of expression with membership or leadership of an armed terrorist organisation without concrete evidence, lacks the required quality of law, again referring to a related Venice Commission opinion.[121]

The Court's reasoning under Article 5 § 1 involved a very detailed examination of all evidence used to justify his pre-trial detention in November 2016. It was considered that the three tweets in question, called for solidarity with Kobane remaining within the bounds of political speech and could not be seen as inciting violence.[122] According to the judgment, his harsh criticisms

[113] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 118
[114] BirGün, 'Erdoğan, HDP'li Vekilleri Hedef Gösterdi: "Katiller Belli, Parlamentoya Sızmışlar"' (21 September 2019) https://www.birgun.net/haber/erdogan-hdp-li-vekilleri-hedef-gosterdi-katiller-belli-parlamentoya-sizmislar-269562 accessed 27 May 2025
[115] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 112
[116] ibid para 113.
[117] Turkish Constitutional Court, *Selahattin Demirtaş (3)*, App no 2017/38610, 9 June 2020.
[118] ibid para 2.
[119] ibid para 238.
[120] *Selahattin Demirtaş v Turkey (no 2)* [GC], para 268.
[121] ibid para 278.
[122] ibid para 327.

of government policy and his statements regarding the events of 6–8 October and the *trench events,* while possibly offensive or unsettling, did not advocate violent methods or amount to terrorist indoctrination, praise of perpetrators, denigration of victims, calls for terrorist funding, or similar acts.[123] The Court held that his participation in the DTK, including the founding meeting, was merely an exercise of his rights under Articles 10 and 11, as the government had provided no specific evidence to suggest otherwise.[124] As for references to other investigations, the Court held that vague and general mentions of ongoing proceedings could not, on their own, justify the reasonableness of the suspicion underlying his detention.[125] The GC judgment, even reviewed the evidence relied on by the Constitutional Court, noting that it was not included in the initial detention order of 4 November 2016, but appeared only in the subsequent bill of indictment.[126] It acknowledged that the statement about putting up a sculpture of Abdullah Öcalan, on 13 November 2012, could be seen as offensive or disturbing, but given the specific context of the "solution process" and the absence of other supporting evidence, did not establish justified reasonable suspicion.[127] In his 21 April 2013 speech, describing the Kurdish movement as waging a war of self-defence, the Court saw an assessment of the conflict, not incitement. The Diyarbakır prosecutor accused him of leading the KCK's political wing, citing allegedly PKK-ordered letter deliveries, but the Assize Court had found this evidence fabricated, and the Government failed to refute it.[128] Phone records suggesting instructions to attend meetings abroad, including at the Council of Europe, were neither authenticated nor proved he followed them or justified prolonged detention.[129] Referring to issues in the application of Article 314, the Court held that Article 5 § 1 was violated due to lack of reasonable suspicion. The Court concluded that although the applicant formally retained his parliamentary status, his pre-trial detention effectively prevented him from participating in the National Assembly, thereby violating both the free expression of the electorate's will and his own right under Article 3 of Protocol No. 1 to be elected and to sit in Parliament.

Similar to the Kavala case, the legal and political developments following the finalization of the judgment up to this date, will be elaborated in detail, in chronological order and under relevant sections.

3.1.3. The *Yüksekdağ Şenoğlu and others v. Türkiye* judgment

With a background in journalism and deep ties to socialist and feminist movements, Figen Yüksekdağ Şenoğlu had been engaged in Türkiye's left-wing politics well before joining the HDP. As explained above, the constitutional amendment of May 2016 affected her, as well. The judicial proceedings closely resembled that of Demirtaş, as she served alongside him as co-chair of the HDP and a member of the National Assembly at the time. [130]

Following the constitutional amendment, all separate and previously initiated criminal investigations against her were consolidated by the Diyarbakır Chief Public Prosecutor into a single case (no. 2016/25124).[131] Both in September and October 2016, she received two formal notices to testify for this case. As was the case with Demirtaş, Yüksekdağ also refused to appear before the prosecutor.

[123] ibid para 328.
[124] ibid para 329.
[125] ibid para 337.
[126] ibid para 338.
[127] ibid para 336.
[128] ibid para 335.
[129] ibid para 337.
[130] *Yüksekdağ Şenoğlu and others v Turkey*, App no 14332/17 and 12 others, 8 November 2022.
[131] Turkish Constitutional Court, *Figen Yüksekdağ Şenoğlu*, App no 2016/25187, 4 April 2018, para 28.

On the same day as Demirtaş, 4 November 2016, Yüksekdağ was taken into police custody following a search of her house, and subsequently placed in pre-trial detention by the Diyarbakır 2nd Judgeship of Peace. The charges against her were the *very* same: membership of an armed terrorist organisation and incitement to commit a criminal offence.[132] Due to her co-chair position in the HDP, she was held equally responsible for the party's posts during 6–8 October 2014. [133] And, the suspicion of her membership in a terrorist organisation was based on allegations that, in numerous speeches at the DTK, she expressed direct or indirect support for actions attributed to PKK members and referred to individuals killed during security operations as "our martyrs."[134]

Yüksekdağ appealed against this decision and the appeal was rejected the following week. She later, on 17 November 2016, lodged an application before the Turkish Constitutional Court which later found it inadmissible in April 2018.[135]

On 15 January 2017, the first indictment was filed against Yüksekdağ by the Diyarbakır Chief Public Prosecutor for her several speeches and public statements between 2012 and 2014[136] with multiple charges.[137] Relying on her speeches after the declaration of self-governance, where she called the military "occupiers" and aligned herself with those the state labelled "terrorists," it was alleged that she incited hatred and violence.[138] Furthermore, several of her speeches were considered to constitute propaganda in favour of PKK terrorist organisation.[139] In the indictment, it was argued that although Yüksekdağ's actions might appear as political, they showed her integration into the PKK hierarchy. [140] She had described PKK acts as legitimate resistance, called those killed in operations "our martyrs," and referred to Abdullah Öcalan as the "leader of the Kurdish people," which the prosecution viewed as glorifying terrorism.[141] She also participated in DTK activities, giving a speech urging public resistance, and in a 23 October 2015 interview on Özgür Gün TV, voiced trust in PYD (Democratic Union Party), YPG (People's Protection Units), and YPJ (Women's Protection Units).[142] These statements were cited as evidence of her leadership role in terrorism and efforts to legitimise violence.[143] Lastly, by referencing HDP's tweets from 6 October 2014, she was accused of inciting the violent acts of that period and calling for armed insurrection alongside Demirtaş.[144]

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[132] *Yüksekdağ Şenoğlu and others v Turkey*, para 19.
[133] See n 73.
[134] Turkish Constitutional Court, *Figen Yüksekdağ Şenoğlu (3)*, App no 2021/7181, 13 January 2022, para 47.
[135] See n 130.
[136] *Yüksekdağ Şenoğlu (3)*, para 24.
[137] Forming or leading an armed terrorist organisation (Article 314 § 1 of the Criminal Code), disseminating propaganda in favour of a terrorist organisation (seven counts – section 7(2) of the Prevention of Terrorism Act (Law no. 3713)), incitement to commit an offence (Article 214 § 1 of the Criminal Code), public incitement to hatred and hostility (two counts – Article 216 § 1 of the Criminal Code), and not complying with orders by the security forces for the dispersal of an unlawful demonstration (section 32(1) of the Meetings and Demonstrations Act (Law no. 2911)).
[138] ibid para 24.
[139] This is how the matter was explained in paragraph 23 of the *Yüksekdağ Şenoğlu and others* judgment without specifying her statements. The relevant indictment was not accessible, as it has not been made available to the public.
[140] This established criterion is considered as one of the constituent elements of the offence of membership in a terrorist organisation by the Court of Cassation.
[141] *Yüksekdağ Şenoğlu (3)*, para 24.
[142] ibid.
[143] ibid.
[144] ibid.

The Diyarbakır Assize Court accepted the indictment in February 2017, sent the case to the Ankara 16th Assize Court for security reasons, which held the first hearing in July 2017.[145] Also, she was stripped of her parliamentary status on 21 February 2017, following a final conviction by the Adana Assize Court for disseminating propaganda in favour of a terrorist organisation. The charge stemmed from her attendance at the funeral of a woman alleged to be a member of the MLKP, a Marxist-Leninist terrorist organisation proscribed under Turkish law. She was sentenced to ten months' imprisonment. Although she had enjoyed parliamentary immunity since her election as MP on 7 June 2015, the proceedings were unlawfully continued and not suspended, in clear disregard of the constitutional parliamentary immunity.[146]

There is unfortunately significantly less information available regarding the acts and statements underlying the proceedings against Yüksekdağ — outside the cases examined in this thesis — both in the ECtHR judgment and in media coverage, compared to those concerning Demirtaş.

On 27 July 2017, she began serving a prison sentence of three years and 15 days, stemming from a series of separate criminal convictions for her statements.[147] On 3 May 2018, she filed a request before the Mardin Assize Court for the deduction of the period spent in pre-trial detention before the Ankara Court proceedings from this final sentence. Accordingly, on 28 November 2018, her request was accepted and she served the remaining sentence until 16 December 2018. Therefore, from 16 December 2018 to 23 January 2019, she was held due to the initial pre-trial detention order issued on 4 November 2016.[148]

Furthermore, on 23 January 2019, she began serving another finalised prison sentence for the offence of disseminating terrorist propaganda, which continued until 25 October 2019.[149] This final decision was quashed later by the Court of Cassation on 12 October 2022, [150] and remitted the case to the first-instance court.[151]Again, therefore, she was detained based on the initial pre-trial detention from 2016 between 25 October 2019 and 22 November 2022.

As explained with Demirtaş, on 20 September 2019, the Ankara 1st Criminal Judgeship of Peace ordered the second pre-trial detention of Yüksekdağ as well, in the scope of the criminal investigation (no. 2014/146757) concerning the 6 - 8 October 2014 events. Therefore, she was in pre-trial detention from this date on, on two separate decisions. The indictment for this

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[145] See n 130.

[146] Turkish Constitutional Court, *Figen Yüksekdağ Şenoğlu and Others*, App no 2016/39759, 30 March 2022. The Court held unanimously that her conviction did not violate her freedom of expression under Article 26 of the Constitution, but by majority found that the revocation of her parliamentary mandate violated her right to be elected and to participate in political life under Article 67.

[147] The sentence consisted of the following: (i) the judgment by the Adana 11th Criminal Court of First Instance dated 8 June 2017, which imposed a one-year prison sentence for 'publicly degrading the Republic of Türkiye'; (ii) a judgment by the Istanbul 22nd Assize Court dated 11 April 2017, which imposed a one-year prison sentence for 'disseminating propaganda in favour of a terrorist organisation'; and (iii) a judgment by the Mersin 2nd Assize Court dated 4 November 2017, which imposed a prison sentence of one year and fifteen days for the same offense; see Council of Europe, 'Communication from the authorities (09/01/2024) concerning the cases of Selahattin Demirtaş v Turkey (No 2) and Yüksekdağ Şenoğlu and Others v Türkiye (Applications No 14305/17, 14332/17) (Selahattin Demirtaş (No 2) group)' (1492nd meeting (March 2024) (DH), Rule 8.2a, 9 January 2024) DH-DD(2024)37E, para 33 https://hudoc.exec.coe.int/?i=DH-DD(2024)37E accessed 7 July 2025.

[148] ibid para 33.

[149] On that date, the execution of this sentence was suspended due to the entry into force of Law No 7188, introduced on 17 October 2019, which granted an additional appeal opportunity for disseminating propaganda in favour of a terrorist organisation before the Court of Cassation under Article 39; see Law No 7188 on Amendments to the Code of Criminal Procedure and Certain Laws (Official Gazette, 17 October 2019) https://mgm.adalet.gov.tr/Resimler/SayfaDokuman/12112019154659718 8%20sayılı%20Kanun.pdf.

[150] See n 147.

[151] Subsequently, on 18 January 2023, this case was joined with the proceedings before the Ankara 22nd Assize Court.

investigation was accepted by the Ankara 22nd Assize Court on 7 January 2021, as explained above in detail.[152] The first proceedings was also merged with the case before the Ankara 22nd Assize Court on 21 February 2021.[153]

The Constitutional Court, on its judgment in March 2022 addressed the initial detention on 4 November 2016, and the second detention order on 20 September 2019, concluding that they are completely separate charges completely ignoring all findings both Demirtaş and Yüksekdağ cases, merely stating that they involved different charges such as undermining the unity of the state, incitement to murder, incitement to robbery, and incitement to deprivation of liberty in a strictly literal sense.[154] Also, relying on the complicated status of her continued detention, explained above in detail, the Constitutional Court held that the 2019 detention order was not enforced in 'practice', and her ongoing detention at the time was solely based on the 2016 order, not causing an 'additional' deprivation of liberty, nor did it constitute a separate interference with her right to liberty and security. The fact that the Constitutional Court addressed an allegation as serious as deprivation of liberty with such a narrowly literal and limited interpretation provides a troubling indication of the Court's approach to safeguarding individual rights and freedoms.

In its judgment of 8 November 2022 of *Yüksekdağ Şenoğlu and others v Türkiye*,[155] the European Court found violations of Article 5 §1, Article 5 §3, Article 5 §4, Article 3 of Protocol No. 1, and Article 18 taken together with Article 5 §1, while finding no violation under Article 5 §4 regarding the speediness and review of the lawfulness of detention with respect to Yüksekdağ. Drawing heavily on the GC's findings in the *Demirtaş* case, the Court concluded that both her detention following the constitutional amendment lifting parliamentary immunity, and criminalisation of her political speeches amounted to an interference with freedom of speech.[156] The Court, referring again, explicitly to GC's findings in the *Demirtaş* case,[157] stressed that the application of these rules relied on in her detention did not meet the quality-of-law requirement.[158] In its examination of Article 5 §3, the Court stated that the domestic courts had failed to point to specific facts or information capable demonstrating reasonable suspicion, at the time of their deprivation of liberty.[159] Similar to Demirtaş, it was concluded that the pre-trial detention imposed on Yüksekdağ had been used for purposes such as silencing an opposition leader finding a violation of Article 18 taken together with Article 5 §1.

On 22 November 2022, the Ankara 22nd Assize Court issued a release, concerning the detention order of 4 November 2016. However, she remained in prison due to the second detention order of 2019.

3.2.Timeline of the CM Interventions Concerning Each Case

Kavala, *Demirtaş (no. 2)*, and *Yüksekdağ Şenoğlu and others* cases are being monitored under the enhanced supervision procedure before the CM. This section traces the course of these procedures. A chronological record of the CM's engagement up to the time of writing, concerning the individual measures required by the judgments, offers insight into how the supervisory function over time in relation to Türkiye is operationalized.

[152] See n 121.
[153] See n 147.
[154] See n 145.
[155] *Yüksekdağ Şenoğlu and others v Turkey*, App nos 14332/17 and others, 8 November 2022.
[156] ibid para 490.
[157] *Selahattin Demirtaş v Turkey (no 2)* [GC], paras 256–280.
[158] *Yüksekdağ Şenoğlu and others v Turkey*, para 490.
[159] ibid paras 525–526, 547.

As explained, the *Kavala* judgment was finalised on 11 May 2020 and subsequently forwarded for supervision of its implementation. Since then, the implementation of the judgment has been examined in 27 CM (Human Rights, DH) meetings, starting with the 1377th meeting (1–3 September 2020),[160] and continuing through to the 1531st meeting (10–12 June 2025),[161] resulting in 27 CM decisions and 68 CM notes to date. During this period, while imprisoned, Kavala via his representatives has submitted 40 Rule 9.1 communications to provide updates on the recent developments and to address actions taken by the Turkish government, or lack thereof. In addition, there have been 15 Rule 9.2 communications from NGOs, one Rule 9.4 communication from the CoE Commissioner for Human Rights on 19 June 2020,[162] also informing the CM impartially on the implications surrounding the release of Kavala. The authorities have responded to almost all of these submissions, contesting every argument in each text with ten Rule 9.6 replies, reflecting a systematic and unwavering rejection of the concerns raised.[163] There are more than 2,000 mentions of the *Kavala* judgment in documents available in the CM's database more than any other judgment to date.

The *Demirtaş (no. 2)* judgment was finalised on 20 March 2021. Since then, the CM has reviewed the implementation of the judgment in seventeen meetings, starting from March 2021 to June 2025.[164] The applicant and his representatives have sent thirty-six Rule 9.1 submissions during this time, and there have been nine Rule 9.2 communications from NGOs. Over 530 references to this judgment can be found in the Committee's documents, with seventeen CM decisions, seventeen CM notes, two executive memos, and three interim resolutions issued so far. Over time, the Committee's language in its decisions evolved from expressing concern to explicitly urging the Turkish authorities to ensure the applicant's immediate release.

In the case of *Yüksekdağ and others*, the judgment was finalised on 6 June 2023. Since then, the implementation has been monitored in nine CM meetings, in the Demirtaş group, beginning from the 1416th meeting in June 2023 to the 1531st meeting in June 2025. Her representatives also provided updates on her detention and responded to government actions. Although relatively recent, the Committee's attention to this case has been steady.

3.2.1. Analysis of Interactions Between Türkiye and the CM

Throughout the entire supervision process, Türkiye has never failed to reject any arguments implying non-implementation of the individual measures, with their Rule 8.2 (a) and Rule 9.5 communications. This includes every doubt raised by the CM, the applicants, the NGOs. The Turkish authorities maintained a consistent narrative which is the applicants were allegedly released concerning the initial charges subject to the ECtHR judgment, but remained in pre-trial detention due to 'new' or 'ongoing' proceedings based on different charges.

Following the Department for the Execution of Judgments' notification on 13 May 2020 requesting information to be submitted to the CM on the urgent individual measures, the Turkish government responded on 2 June 2020, by stating, that the CM's mandate under Article 46 was limited in scope concerning the Court's findings in the judgment of *Kavala v. Turkey,*

[160] Committee of Ministers, '377bis Meeting (DH) (1–3 September 2020) – H46-38 Mergen and Others (App no 44062/09) and Kavala (App no 28749/18) v Turkey' https://hudoc.exec.coe.int/?i=CM/Notes/1377bis/H46-38E accessed 27 May 2025.
[161] Committee of Ministers, '1531st Meeting (DH) (10–12 June 2025) – H46-38 *Kavala v Türkiye* (App no 28749/18)' https://hudoc.exec.coe.int/?i=CM/Notes/1531/H46-38E accessed 10 July 2025
[162] Committee of Ministers, '1377th Meeting (DH) (1–3 September 2020) – Rules 9.4/9.6 – Communication from Other Organisation: the Council of Europe Commissioner for Human Rights (19 June 2020) in the Case of *Kavala v Turkey* (App no 28749/18, Mergen and Others Group) and Reply from the Authorities (2 July 2020)' https://hudoc.exec.coe.int/?i=DH-DD(2020)577revE accessed 30 May 2025.
[163] available under case documents at HUDOC EXEC.
[164] available under case documents at HUDOC EXEC.

10 December 2019.[165] It was argued that Kavala was acquitted of the Article 312 charge on 18 February 2020 and later released from detention under Article 309 on 20 March 2020. However, before ever being physically released, another detention was issued on 9 March 2020, this time for espionage charges under Article 328. The factual basis for the charges will be explained in detail in the following sections.

The CM, at the 1377th meeting, where the *Kavala* case was first examined, underlined that individual measures must aim at *restitutio in integrum* and align with the spirit of the Court's judgment, immediately calling for the applicant's immediate release to remedy the illegitimacy of the detention as need be. Not persuaded by the Turkish authorities' arguments, the Secretariat admits its strong presumption that the current detention constitutes an obvious continuation of the same violations, noting that the supposedly new espionage charge under Article 328 appears factually similar to previous allegations and also concerns events long preceding the arrest.

Following the non-compliance by the authorities despite repeated calls for release, the CM had to adopt its first Interim Resolution at the 1390th meeting, the Committee urging Türkiye to ensuring immediate release and a prompt Constitutional Court review with a concerned tone.[166] After the Constitutional Court ruled his detention lawful, the Committee, took the enhanced procedure of examination further and, at the 1398th meeting, decided to examine the case at each and human rights session until his release. [167]

Following more resistance, the CM adopted its second and third Interim Resolutions[168], and was compelled to initiate and confirm infringement proceedings under Article 46 § 4 due to Türkiye's insisted failure to execute.[169] Despite the 'pressure' of potential infringement proceedings**,** in April 2022, Kavala was convicted under Article 312 in the Gezi trial and placed in pre-trial detention until the finalisation of the decision. [170] Following this development, on 11 July 2022, the Grand Chamber plainly confirmed that Türkiye had not complied with its obligations under Article 46 § 1 of the Convention, thus concluding the infringement process. The Court took the chance and found that the non-compliance also pursued an ulterior purpose, and no genuine steps had been taken to secure his release with an in-depth analysis of the alleged evidence presented by the authorities which will be analysed in detail in the upcoming sections to demonstrate Türkiye's malicious attempts.

Subsequent meetings including the 1443rd and 1446th, the CM adopted an unexpected approach following the failure of even its strongest tool — the infringement process — to secure the applicant's release. This time, the CM turned their focus on 'strengthening political and

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[165] Committee of Ministers, 'DH-DD(2020)477' https://hudoc.exec.coe.int/?i=DH-DD(2020)477E accessed 16 June 2025.

[166] Committee of Ministers, *Interim Resolution CM/ResDH(2020)361 – Execution of the Judgment of the European Court of Human Rights – Kavala v Turkey (App no 28749/18)* https://search.coe.int/cm?i=0900001680a09786.

[167] Committee of Ministers, '1398th Meeting (DH) (9–11 March 2021) – H46-33 *Kavala v Turkey* (App no 28749/18)' https://hudoc.exec.coe.int/?i=CM/Notes/1398/H46-33E.

[168] Committee of Ministers, 'At its 1411th Meeting, the Committee Decided to Serve Formal Notice of Its Intention to Initiate Article 46 § 4 Proceedings against Turkey, Should the Applicant Not Be Released by the 1419th Meeting (H46-37 *Kavala* (App no 28749/18) and *Mergen and Others* Group (App no 44062/09) v Turkey)' https://search.coe.int/cm?i=0900001680a3a81b.

[169] Committee of Ministers, *Interim Resolution CM/ResDH(2021)432: Execution of the Judgment of the European Court of Human Rights, Kavala v Turkey* (adopted on 2 December 2021 at the 1419th meeting of the Ministers' Deputies) https://hudoc.exec.coe.int/?i=001-214838.

[170] Committee of Ministers, '1436th Meeting (DH) (June 2022) – Rule 9.1 – Communication from the Applicant (30 May 2022) in the Case of *Kavala v Turkey* (App no 28749/18)' https://hudoc.exec.coe.int/?i=DH-DD(2022)601E.

technical dialogue' with Türkiye.[171] A Liaison Group was established to support engagement efforts, reflecting the Committee's standard practice in complex non-compliance cases. The Group, though not based on treaty provisions, is based on established Committee practice to facilitate high-level technical dialogue in complex non-compliance cases.[172] This situation is borders on ironic, as it is unclear what meaningful outcomes can be expected from verbal exchanges with the Turkish authorities, especially when judgments remain without effect and repeated findings of explicit bad faith persist.

Unsurprisingly, the initiatives with the Liaison Group engaging in so-called high-level technical meetings somewhat proved to be not working as the CM expressed its concerns at the 1475th, 1483rd, and 1501st meetings, the Committee over the lack of progress towards compliance. Particular concern was raised over delays by the Constitutional Court and the finalization of his aggravated life sentence by the Court of Cassation which once again underscored the limited impact of 'high-level' engagements.[173] At its 1514th and 1521st meetings, the CM encouraged a friendly settlement before the Court, a step that appeared puzzling, if not self-defeating.[174]

Finally, before the most recent meeting in June 2025, Kavala's representatives reminded the CM that his conviction on 25 April 2022, for attempting to overthrow the government by force under Article 312 became final as of September 2023. Also, they reminded that two separate applications before the Constitutional Court in 2022, remain pending.[175] Another update was the fresh application to the European Court in January 2024, which was communicated to the Turkish government in March 2024.[176] At its latest meeting, the CM, noting Kavala's submission, pointed to a Convention-compliant decision by the Constitutional Court with full consideration of the Court's reasoning under Articles 18 and 46 § 4 of the Convention as a key avenue to provide a procedural possibility for a retrial. [177] While this was emphasized as part of the collective responsibility of Turkish authorities, including the judiciary, to secure implementation, it remains sadly doubtful whether such references can meaningfully advance compliance, given the persistent pattern of non-execution observed thus far.

Returning to the Demirtaş case, the Department for the Execution of Judgments' notification on 18 January 2021 requested information on the expected release following the finalisation of the judgement. The government responded on 2 February 2021, in a tone very similar to that used in the Kavala case. They claimed that Demirtaş was no longer detained on the basis of the proceedings examined by the judgment of the Court.[178] This time around, the 'new detention with separate charges' strategy started to look like a pattern comparable to both Kavala and Yüksekdağ.

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[171] Committee of Ministers, 1446th meeting of the Ministers' Deputies (19 & 20 October 2022) https://www.coe.int/en/web/cm/-/meeting-of-the-ministers-deputies-on-19-october-2022.
[172] See n 153.
[173] available under case documents at HUDOC EXEC.
[174] available under case documents at HUDOC EXEC.
[175] Committee of Ministers, '1531st Meeting (DH) (June 2025) – Rule 9.1 – Communication from the Applicant (10 June 2025) in the Case of *Kavala v Türkiye* (App no 28749/18)' https://hudoc.exec.coe.int/?i=DH-DD(2025)673E.
[176] *Mehmet Osman Kavala v Turkey*, App no 2170/24, communicated 21 March 2024 https://hudoc.echr.coe.int/eng?i=001-233151.
[177] Committee of Ministers, '1531st Meeting (DH) (10–12 June 2025) – H46-38 *Kavala v Türkiye* (App no 28749/18)' https://hudoc.exec.coe.int/?i=CM/Del/Dec(2025)1531/H46-38E.
[178] Committee of Ministers, '1398th Meeting (DH) (March 2021) – Rule 9.1 – Communication from the Applicant (19 February 2021) in the Case of *Selahattin Demirtaş v Turkey (no 2)* (App no 14305/17)' https://hudoc.exec.coe.int/?i=DH-DD(2021)214E.

In its first ever examination of the case, at the 1398th meeting, the CM explained that there are three sets of criminal proceedings currently pending which were addressed in the judgment, in detail. The CM rejected the government's claim of a new investigation, underlining that continued detention based on similar facts prolongs the violation and breaches Türkiye's obligation to abide by the judgment.[179]. Following two meetings in June and September 2021, in its first Interim Resolution adopted at the 1419th meeting, the CM strongly urged his immediate release and called on the Constitutional Court to rule promptly and in line with the Court's judgment. Following clear rejection, the CM had no choice other than adopting more interim resolutions highlighting its growing frustration but also incapacity. The second Interim Resolution reminded the Court's findings in detail and warned that the continued detention on similar grounds prolongs these violations and breaches Türkiye's obligations under Article 46[180] Meanwhile, the authorities claimed that new evidence, presented since October 2021, shows intent to incite violence and differs from what the Court had examined.[181]

After the 1468th meeting in June 2023, the supervision of Demirtaş (no. 2) was joined with Yüksekdağ Şenoğlu, finalised in April 2023. In May 2024, the government notified the Committee of convictions in the Kobane case, suggesting that the pre-trial detention examined in the judgments no longer apply. [182] However, the CM was apparently not convinced and adopted its latest Interim Resolution—the third for Demirtaş, the first for Yüksekdağ, again with a worried tone signalling deepening dissatisfaction with Türkiye's persistent defiance. [183]

At its 1531st meeting in June 2025, the CM once again pointed to the persistent delays by trial court and the Constitutional Court in the Demirtaş and Yüksekdağ Şenoğlu proceedings, concluding again that continued detention on essentially the same grounds constitutes an ongoing breach of Article 46 § 1.[184] The CM also invited member States to raise the cases diplomatically, despite the growing sense that such dialogues have so far yielded little beyond formal ritual.

3.3.Legal Limits of Diplomatic Rituals in the CM Enforcement Model

The volume and severity of the above-mentioned engagements are listed to provide a perspective into the structural limitations stemming from the CM's supervision model. Despite years of extensive formal interaction, the core issue on the implementation remains unresolved. As can be seen, the latest CM decisions are still limited to expressing concern and urging the immediate release of the three individuals, nearly a decade after their initial arrests. This raises a fundamental question explored below: what is the practical capacity of the CM supervision in connection to? Certainly, many scholars had long found answers to this question — often with a cynical tone — that the limited nature of the CM's supervisory mechanism was far from

[179] Committee of Ministers, '1398th Meeting (DH) (9–11 March 2021) – H46-40 *Selahattin Demirtaş v Turkey (no 2)* (App no 14305/17)' https://hudoc.exec.coe.int/?i=CM/Notes/1398/H46-40E.
[180] Committee of Ministers, *Interim Resolution CM/ResDH(2021)428: Execution of the Judgment of the European Court of Human Rights, Selahattin Demirtaş v Turkey (no 2)* (adopted 2 December 2021 at the 1419th meeting of the Ministers' Deputies) https://hudoc.exec.coe.int/?i=001-214837.
[181] Committee of Ministers, '1419th Meeting (DH) (December 2021) – Rule 9.1 – Communication from the Applicant (8 November 2021) in the Case of *Selahattin Demirtaş v Turkey (no 2)* (App no 14305/17)' https://hudoc.exec.coe.int/?i=DH-DD(2021)1168E.
[182] Committee of Ministers, '1468th Meeting (DH) (5–7 June 2023) – H46-33 *Selahattin Demirtaş (no 2) Group v Turkey* (App no 14305/17)' https://hudoc.exec.coe.int/?i=CM/Notes/1468/H46-33E.
[183] Committee of Ministers, *Interim Resolution CM/ResDH(2025)34: Execution of the Judgments of the European Court of Human Rights, Selahattin Demirtaş (no 2) Group v Turkey* (adopted 6 March 2025 at the 1521st meeting of the Ministers' Deputies) https://hudoc.exec.coe.int/?i=001-242465.
[184] Committee of Ministers, '1531st Meeting (DH) (10–12 June 2025) – H46-40 *Selahattin Demirtaş (no 2) Group v Turkey* (App no 14305/17)' https://hudoc.exec.coe.int/?i=CM/Notes/1468/H46-33E.

a Rolls-Royce model of enforcement;[185] rather, it resembled a case of *Foxes Guarding the Foxes*.[186]

Although the CM's role is legally grounded in Article 46 of the Convention, the gap between its formal authority and its practical capacity to secure compliance becomes especially apparent in these cases. In this way, the empirical narrative and the analytical framework directly inform one another: the Turkish cases serve not just as examples but as empirical confirmation of the structural critiques of the CM system. Together, they illustrate how political opposition, bad-faith compliance, and the absence of enforcement tools overlap to leave the supervision process ineffective in the face of authoritarian resistance. This synthesis strengthens the normative claims of the thesis and aims to provide further proof for a critical discussion on the need for institutional reform. The academic literature has already extensively examined the interrelated deficiencies of the CM's supervisory framework, which include, but are not limited to, the following.

Manifestly, one of the most fundamental limitations of the CM supervision system is its lack of coercive powers.[187] The CM cannot impose sanctions, financial penalties like the EU Court, or binding corrective measures on non-compliant states.[188] Its main tools are political. And these tools include resolutions, dialogue, recommendations, and expressions of mere concern. These mechanisms rely entirely on the willingness of member states to engage and comply in good faith. When encountered with active compliance, the CM is left with few, if any, practical means. According to Stafford, barriers to the implementation of judgments can be characterised into three broad categories, the first of which is political opposition, exemplified by the Kavala and Demirtaş cases.[189] Closely connected to this is that this model has heavy dependence on state cooperation. The CM supervision framework is designed on the assumption that member states want to comply and will take necessary steps to execute judgments. In cases where governments resist compliance or act in bad faith, this reliance turns into a vulnerability. As studied in this thesis, Türkiye has pursued ulterior motives in placing these three individuals in pre-trial detention as well as in not releasing them. The Turkish authorities, in this way, have been able to offer minimal or symbolic gestures without the actualization of individual measures and still claim they are working toward compliance. Without an external enforcement mechanism, it is naive to assume that the Turkish government will release these individuals.

Another major limitation arises from the CM's nature as a political body operating through diplomatic discretion and consensus. Decisions on how to supervise, escalate, or close cases are made collectively by representatives of member states. This is why the implementation is an inherently political process.[190] Political alliances, shared interests, and diplomatic caution

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[185] A K Speck, 'The European System of Human Rights Protection: No Rolls-Royce, but a Solid Engine Fit for the Future? In Conversation with Council of Europe Insiders' (2020) 12(1) *Journal of Human Rights Practice* 155

[186] B. Çali and A. Koch, "Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe" (2014) 14(2) *Human Rights Law Review* 314.

[187] Helen Keller and Viktoriya Gurash, '"Upping the Ante": Rethinking the Execution of Judgments of the European Court of Human Rights' (2023) (2) EHRLR 153 https://www.venice.coe.int/cocentre/Hellen%20Keller%20%26%20Viktoriya%20Gurash_EHRLR_Issue_2_Print.pdf.

[188] P Wennerås, 'Making Effective Use of Article 260 TFEU' in A Jakab and D Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States' Compliance* (Oxford 2017; online edn, Oxford Academic, 20 April 2017) 89–96.

[189] George Stafford, 'The Urgent Reforms Needed to Improve the Implementation of Judgments of the European Court of Human Rights' (2023) 2 European Human Rights Law Review 135, 136, DOI: 10.3316/agispt.20230725091996.

[190] Hillebrecht, 'Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights', 13 *Human Rights Law Review (HRLR)* (2012) 279, at 280.

can all shape how firmly the CM responds to non-compliance.[191] In politically sensitive cases such as these Turkish cases, governments may hesitate to confront one of their peers,[192] especially when larger geopolitical considerations are involved. The system relies heavily on NGO communications, media pressure, and political lobbying to gain *momentum*. As demonstrated above, this has led to repetitive decision cycles. The CM has adopted the same decisions with the same exact sentences over the last five years. In the Kavala case, while the establishment of a Liaison Group and high-level technical dialogues represents an effort to innovate within the existing framework, these mechanisms remain informal and lack enforceability. Furthermore, in a case of such a grave and severe violation, expecting negotiation with highly politicized AKP officials can even be seen frankly absurd. As evidenced by the Turkish government, the states can engage in these dialogues without making substantive concessions for a very long time.

Actually, the escalation mechanisms available to the CM are also limited. The most significant tool, the infringement proceedings under Article 46 § 4 allows the CM to refer a non-compliant state back to the ECtHR for a formal determination that it has failed to execute a judgment. Even this extreme procedure is designed to create "feeling of political pressure" to member states.[193] The enforcement system may lead to the states being voted down in the CM and subjected to a range of potential sanctions, such as being denied the right to vote. However, in fact, these available measures result in mere diplomatic and reputational pressure only harnessing the power of what is referred to as 'compulsion through hegemonic discourse'.[194] Under Article 46 § 4, the proceedings can only be triggered by a vote of at least two-thirds of the members of the CM following a state's failure to execute a judgment after service of an official notice to comply. As Londras and K Dzehtsiarou suggest this requirement actually would be extremely politically challenging on two accounts: the first is the very nature of the convincing process and the latter is the fear of states being the next one as there are many non-compliant states.[195] Therefore, this process is rarely used, and even if then only produces a declaratory outcome. It does not impose material sanctions or introduce any new obligations on the state beyond reaffirming what was already decided. Following the infringement procedures with the Kavala case in July 2022, it has been 3 years without seeing any effect.[196]

Time is another critical factor that weakens the supervision process. The CM supervision can stretch over years or even decades. This prolonged timeline creates opportunities for governments to shift domestic political narratives, or simply wait for international attention to fade. In all assessed cases, during the CM engagement, they have already been convicted of so-called *seperate* charges, not specifically addressed by the Court. The absence of clear deadlines or escalation triggers also leads to loss of pressure over time, undermining the urgency that supervision mechanisms are meant to generate especially concerning individual measures ensuring release.

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[191] F de Londras and K Dzehtsiarou, 'Mission Impossible? Addressing Non-Execution through Infringement Proceedings in the European Court of Human Rights' (2017) 66(2) ICLQ 467, 482.
[192] B. Çali and A. Koch, n 186.
[193] Julie-Enni Zastrow and Andreas Zimmermann, 'Council of Europe's Committee of Ministers Starts Infringement Proceedings in *Mammadov v Azerbaijan*: A Victory for the International Rule of Law?' (EJIL:Talk!, 5 February 2018) https://www.ejiltalk.org/council-of-europes-committee-of-ministers-starts-infringement-proceedings-in-mammadov-v-azerbaijan-a-victory-for-the-international-rule-of-law/ accessed 1 July 2025.
[194] Vusal Mehdiyev, 'The Enforcement of European Court of Human Rights Judgments in Council of Europe Member States' (25 December 2024) SSRN <http://dx.doi.org/10.2139/ssrn.5072054> accessed 6 May 2025.
[195] F de Londras and K Dzehtsiarou, 'Mission Impossible? Addressing Non-Execution through Infringement Proceedings in the European Court of Human Rights' (2017) 66(2) ICLQ 467, 482.
[196] Başak Çalı, 'The Present and the Future of Infringement Proceedings: Lessons Learned from *Kavala v Türkiye*' (2023) 2 ECHR Law Review 157, 159.

Another important limitation lies in The CM also lacks direct engagement with domestic courts, prosecutors, or parliaments. It communicates with governments, typically through ministries or permanent representations, and depends on them to coordinate domestic implementation.[197] When the domestic judiciary or other legal institutions are part of the problem — whether through politicization, co-optation, or systemic bias — the CM has no independent channel to influence or correct their actions. This gap became particularly acute in Article 18 contexts, where the Turkish governments misuse of judicial institutions is often at the heart of the violation.

In sum, the limitations of the CM supervision system are deeply embedded in its design. As a political, non-coercive, consensus-driven mechanism, it can only work effectively when governments are willing to engage constructively. This system evidently fails when faced with such determined non-compliance. Understanding these limitations, it is essential to develop a more effective supervision model with institutional reforms.

4. Domestic Backlash and Symbolic Compliance: Evolving Tactics of the Turkish Judiciary

As first introduced by Levitsky and Way, competitive authoritarian regimes combine democratic formalities with authoritarian practices.[198] These regimes do not risk losing the benefit from the superficial appearance of democracy and legality, even as they bypass the real limits of the rule of law.[199] Given its lack of coercive powers and binding means, the Committee of Ministers basically offers two options to such governments: open non-compliance or the illusion of compliance. Having adopted these modern authoritarian practices, the Turkish government appears to remain formally committed to the CoE system and its human rights regime, thereby ensuring its national and international legitimacy.

In her article, Ula Aleksandra Kos highlights Hungary's systematic resistance to implement the general measures required by ECtHR judgments through several evasion tactics.[200] She draws on broader academic discourse and notes that legal and public administration scholars have identified this pattern of behaviour under the concept of 'symbolic' or 'creative compliance'. Kos describes this practice as a tactic where governments adopt intentionally superficial measures which is designed to hide their actual unwillingness to comply with formal obligations.[201]

As Londras and Dzehtsiarou contend, non-execution can be divided into two groups: non-execution and dilatory non-execution. [202] They explain that principled non-execution is rooted in a fundamental disagreement with the Court's authority, as seen in some cases in the UK where national courts adopt a different approach in interpreting the law and legislation.[203] The

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[197] LR Helfer, 'Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime' (2008) 19(1) EJIL 125, 136 https://academic.oup.com/ejil/article/19/1/125/430843.

[198] Steven Levitsky and Lucan A Way, 'The Rise of Competitive Authoritarianism' (2002) 13(2) *Journal of Democracy* 51; Steven Levitsky and Lucan A Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (Cambridge University Press 2010) 54.

[199] Kim Lane Scheppele, 'Autocratic Legalism' (2018) 85(2) U Chi L Rev 545, 563.

[200] Kos UA. Controlling the Narrative: Hungary's Post-2010 Strategies of Non-Compliance before the European Court of Human Rights. *European Constitutional Law Review*. 2023; 19(2): 195-222. doi:10.1017/S1574019623000044.

[201] A Batory, 'Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU' (2016) 94 Public Administration 685, 686–87.

[202] Fiona de Londras and Kanstantsin Dzehtsiarou, 'Mission Impossible? Addressing Non-Execution through Infringement Proceedings in the European Court of Human Rights' (2017) 66 ICLQ 467, 474.

[203] ibid 474.

term *dilatory non-execution* is described as habitual delay or resistance which is a mere delaying practice that reflects deeply problematic and institutionalised resistance to the very idea of liberal human rights protection.[204]

Therefore, the terms *symbolic compliance* or *dilatory non-compliance* may capture the very practices that will be examined in the following sections with respect to Türkiye's handling of the Demirtaş, Yüksekdağ, and Kavala proceedings before national courts, after the Court's judgments. Türkiye, in these cases, adopted a reactive form of backlash manipulated by superficial procedural engagement. While Turkish national courts have occasionally referenced the ECtHR judgments and the CM's decisions, these gestures amount to what Aleksandra Dzięgielewska explains as procedural 'mimicry'.[205] This mimicry is a surface-level performance of compliance without substantive transformation.[206] Also, Çalı identified these procedural moves followed by the Turkish authorities, in connection to the implementation of Kavala and Demirtaş's judgments, as *Byzantine Manoeuvres*, describing them as different types of legalist tactics.[207]

Ultimately, despite their different labels in the literature, these practices amount to one underlying phenomenon: deliberate resistance to international legal obligations. This thesis aims to analyse the primary deflection strategy employed by the Turkish authorities which is the reintroduction of pre-trial detentions under new or recharacterized charges that are closely related, if not identical, to those previously reviewed by the ECtHR. Even though this strategy, repeatedly and unmistakably have been identified both by the Court and the CM, the CM's institutional weakness and inability is not capable of fighting such open or *concealed* defiance.

Even though the judgments primarily addressed the lawfulness of the applicants' pre-trial detentions in relation to specific investigations, charges, and the reasonable suspicion underlying them, the Court also delivered a detailed analytical assessment of the statements and actions leading to the detentions. Based on this empirical and analytical groundwork, the following subsections examine how the strategy of reintroducing detention through legal recharacterization has been operationalised in practice, using troubling examples from these cases.

4.1.Following the Kavala judgment

Following the finalisation of the Kavala judgment, on 11 May 2020, the domestic proceedings entered an absurd new phase with escalating legal complexity.

On 28 September 2020, the Istanbul Chief Public Prosecutor's Office issued a fresh indictment against Kavala, finally under Articles 309, and 328 (*military or political espionage*) of the TCC. The indictment, again, alleged that Kavala had collaborated with Henry J. Barkey both before and after the 2016 attempted coup, relying on mobile signal data on 18 July 2016.[208] Additionally, his involvement in Open Society Foundation's network as well as his other domestic and international contacts were considered evidence just like the initial indictment The above-mentioned parts of the Kavala judgment, very clearly found these acts as lawful. [209] Nevertheless, the prosecution treated them as wholly separate legal incidents, allowing

[204] ibid 474.
[205] Aleksandra Dzięgielewska, 'A Mimicry of International Law Compliance: How the Abusive Interpretation of International Norms Serves Poland's Illiberal Regime' (2023) 23(1) Chi J Intl L Essay.
[206] ibid.
[207] Başak Çalı, *Byzantine Manoeuvres: Turkey's Responses to Bad Faith Judgments of the EctHR* (Verfassungsblog, 19 February 2020) https://verfassungsblog.de/byzantine-manoeuvres/ accessed 9 June 2025.
[208] *Kavala v Turkey* (infringement proceedings) [GC], para 165.
[209] ibid.

domestic courts to *maintain* his detention on the pretext that the Court's ruling had no bearing on the new legal situation, time and again.

Meanwhile, in January 2021, the appeal court overturned the previous acquittal judgment concerning the Article 312 charge, which had been delivered on 18 February 2020, and remitted the case to the Istanbul 30th Assize Court.[210] Shortly after, the espionage case previously handled by the 36th Assize Court was also transferred to the 30th Assize Court, effectively consolidating the proceedings further complicating the classification of the allegations. Around the same period, a significant development occurred: in April 2021, the Court of Cassation overturned the acquittal decision from 2015, issued in the so-called *Çarşı case* with reference to a group of supporters of the Beşiktaş football team who famously participated in the protests,[211] by the Istanbul 13th Assize Court. Although Kavala was not a defendant in that case, the Court of Cassation unexpectedly recommended merging the *Çarşı* case with the proceedings before the 30th Assize Court, since both involved charges under Article 312 related to the Gezi Park protests—an unusual move that drew strong procedural objections.[212] This can be seen as another calculated move, this time from the Court of Cassation, to cause further complications, bringing numerous defendants into the process and adding layers of procedural confusion.

Another resistance, arguably came from the Constitutional Court, in March 2021, with its judgment regarding Kavala's second individual application.[213] Completely ignoring the Court's findings, by a narrow margin of eight votes to seven, the Constitutional Court concluded the evidence including Kavala's alleged contacts with Barkey, phone records, and MASAK findings was sufficient to establish strong suspicion, noting that Barkey was believed to have engaged in espionage against Türkiye and to have provided logistical support to the coup attempt.[214]

On 15 June 2021, the trial court consulted the 13th Assize Court on merging the *Çarşı* file. Although the 13th Court initially rejected the merger as procedurally inappropriate, on 28 July 2021, the presiding judge of the 30th Assize Court was temporarily appointed as president of the 13th, where he promptly approved his own prior request. This absurdity evidently amounted to a striking *procedural comedy*: a judge effectively stamped his own manoeuvre, in a blatant disregard for basic principles of judicial impartiality and due process — a situation so absurd that even an uninformed observer could grasp its impropriety. This move also brought all charges under Articles 309, 312, and 328 in one case, meanwhile he remained in pre-trial detention under Article 328. But, remarkably, on 22 February 2022, the trial court separated the *Çarşı* case without any justification.[215] Then, on 25 April 2022, the 13th Assize Court acquitted Kavala of the espionage charge under Article 328—under which Türkiye had long argued before the CM that his detention was different and thus fell outside the ECtHR judgment. Yet, tellingly, at the end of the trial, he was convicted under Article 312 and sentenced to aggravated life imprisonment, despite Türkiye's prior claims that he was not charged under 312. This turn of events, in my opinion, not only showed the tactical nature of these legal manoeuvres but also their almost absurd character.

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[210] See n 57.
[211] See n 57.
[212] Amnesty International, 'Gezi Parkı ve Çarşı Davası (Birleştirilen & Sonra Ayrılan) Trial Observation Report' (29 October 2021) https://www.amnesty.org.tr/icerik/gezicarsibirlesik accessed 1 July 2025.
[213] Turkish Constitutional Court *Mehmet Osman Kavala (2)*, App no 2020/13893, 29 December 2020.
[214] See further, the investigative authorities' findings that Barkey sat on the management board of a foundation whose honorary president was the head of FETÖ/PDY and that he arrived in Türkiye on 15 July 2016 to assist the coup operation.
[215] See n 57.

Shortly thereafter, on 11 July 2022, the ECtHR issued a *violation of Article 46* judgment underscoring Türkiye's failure to implement its prior ruling, as mentioned above.[216] The Court made it clear that its findings under Article 5 § 1 applied to the *entirety* of the charges in connection with both the 2013 Gezi protests and the 2016 attempted coup. Crucially, the Court finally defined all the manoeuvres exercised by the authorities as a mere reclassification of these same underlying facts specifically recharacterizing them as military or political espionage.[217] As explained before, the authorities' arguments relying on two core elements which are his alleged contacts with Barkey and his civil society activities through NGOs have been discredited.[218]

This time, the resistance came from the Chief Public Prosecutor of the Court of Cassation On 7 July 2023. With its opinion, the prosecution rejected Kavala's appeal with complete disregard of either the 2019 or 2022 judgments of the European Court. On 28 September 2023, the Court of Cassation, formally finalised his sentence.[219] The Court of Cassation also did not refer to or address any of the key findings from the Court.[220] Actually, by failing to engage with, let alone incorporate or even acknowledge, the binding findings of the Court, the Court of Cassation not only disregarded the authority and legal effect of Strasbourg's judgments but also openly defied Türkiye's obligations under Article 46 of the Convention and the fundamental principle of the rule of law. Kavala thus began serving his sentence as a convicted prisoner.

Meanwhile, Kavala lodged a fourth individual application (no. 2023/94719) to the Constitutional Court in October 2023[221] and, a second one with the ECtHR on 18 January 2024.[222] The latter was communicated to the Turkish Government on 21 March 2024.[223] In its communication, the Court invited the authorities to address whether the domestic courts properly took into account the findings of previous ECtHR judgments in assessing fairness. This time, taking all the proceedings and decisions before national courts over the years into account, the impartiality and independence of the tribunal, the fairness of the trial, including equality of arms and the right to challenge witnesses were raised as issues. Also, the foreseeability and clarity of the criminal charges under Article 7 and whether the prolonged detention without meaningful review amounted to inhuman or degrading treatment under Article 3. Although these are very strong legal arguments and raise serious issues, such judgment may still not ensure his release.

4.2.Following the Demirtaş (No. 2) judgment

The events following the GC judgment were as preposterous as the Kavala case. First, Ankara Public Prosecutor submitted a bill of indictment, against 108 persons, including most importantly, Demirtaş, Yüksekdağ and other HDP MPs, again on account of the 6 - 8 October 2014 events with complete disregard of the findings of the Court. This 3530-page indictment

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[216] *Kavala v Turkey* (infringement proceedings) [GC].
[217] ibid para 165.
[218] ibid para 165
[219] Osman Kavala: Niyet Okumanın Yargıtay Düzeyinde İfade Bulması Tehlikeli' (Bianet, 11 July 2023) https://bianet.org/haber/osman-kavala-niyet-okumanin-yargitay-duzeyinde-ifade-bulmasi-tehlikeli-281379 accessed 27 June 2025.
[220] *Kavala v Turkey*, paras 222, 223, 227; Financial Crimes Investigation Board (MASAK) report, para 227; *Kavala v Turkey* (infringement proceedings) [GC], paras 145, 172; see also para 233 on the criminalisation of Mr Kavala's exercise of his Convention rights and his legitimate activities as a human rights defender, including interactions with Council of Europe bodies.
[221] See n 57.
[222] See n 57.
[223] *Kavala v Türkiye (No 2)*, App no 2170/24, communicated 21 March 2024, https://hudoc.echr.coe.int/?i=001-233151.

packed mostly with redundant documents was accepted by the Ankara 22nd Assize Court on 7 January 2021.[224]

With regards to the above-mentioned second set of proceedings, Demirtaş's conviction was upheld by the Court of Cassation in April 2021, and effectively ensured his serving of prison sentence on 3 May 2021.[225] Soon after, in May 2021, the criminal proceedings before the Ankara 19th Assize Court (first set) and the Ankara 22nd Assize Court (third set) were joined, concentrating multiple legal aspects into a single file with hundreds of suspects. It should be highlighted that this consolidation did not, whatsoever, reduce the legal pressure on Demirtaş; on the contrary, it created a layered procedural framework. This was basically built to confuse the CM and, allowing the authorities to maintain his detention even when prior sentences formally ended. Arguably, this also creates a heavy workload for his defence. Even his prison sentence from the second set of proceedings on 16 November 2021 had ended, the authorities made sure Demirtaş remained in pre-trial detention in connection with the first and third set. The courts thus maintained a seamless legal chain, preventing his release with any useful and legal means.

On 16 May 2024, after 83 hearings over the years, the Ankara 22nd Assize Court finally delivered its judgment in the Kobane trial.[226] All politicians, including Demirtaş were acquitted of the *gravest* charges related to the deadly events of 6–8 October 2014, concluding that the alleged offences could not be proven beyond reasonable doubt. This was a rare moment of judicial acknowledgment of insufficient evidence on the most politically instrumentalised allegations. Yet, despite the acquittal on these charges, Demirtaş was sentenced to 20 years for '*aiding' the offence of undermining the unity and territorial integrity of the State* based on the same evidence that was deemed insufficient. He was also convicted due to his speeches examined by the Grand Chamber.[227] Altogether, he was sentenced to 42 years of imprisonment cumulatively.

This vicous cycle of criminal proceedings against Demirtaş goes far beyond just three major cases. Even if he were released tomorrow in connection with those three, the legal framework has been built to keep him continuously vulnerable. Without access to all his cases, for

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[224] Communication from the applicant (19/02/2021) in the case of Selahattin Demirtas v. Turkey (no. 2) (Application No. 14305/17). At https://hudoc.exec.coe.int/?i=DH-DD(2021)214E: which consists of 324 folders of evidence and annexes and names 2676 complainants and victims as well as 37 persons who had been allegedly killed during the events of 6-8 October 2014.

[225] Amnesty International, 'Gezi Davası Düşünce Mahkumları Serbest Bırakılmalı!' (Amnesty International Türkiye, undated) https://www.amnesty.org.tr/icerik/gezi-davasinda-tutuklananlari-serbest-birakin accessed 2 July 2025.

[226] Şanlıurfa Bar Association and Association for Access to the Right to a Fair Trial, *Observation Report on the Kobani Trial, Judgment Hearing of 16 May 2024* https://medya.barobirlik.org.tr/BaroWebSite/uploads/63/Etkin%20Savunuculuk%2FKobani_davasi_karar_gozlem_rapor.pdf.

[227] Additional sentences were imposed on Demirtaş for numerous public statements between 2012 and 2016: 4 years and 6 months for incitement to commit offences (2017 Diyarbakır investigation); 2 years and 6 months for terrorist propaganda (Newroz, Diyarbakır, 21 March 2016); 1 year and 6 months for inciting disobedience to the law (Dicle Fırat Cultural Centre, 29 February 2016); 2 years and 6 months for terrorist propaganda (HDP Diyarbakır office, 9 September 2015); 3 years for encouraging unlawful gathering (Newroz, Diyarbakır, 2012); 1 year and 6 months for participating in unlawful demonstration (Cizre, 12 September 2015); 1 year for terrorist propaganda (Cizre, same event); 1 year and 6 months for praising criminal acts (Kızıltepe rally, 13 November 2015); and 2 years for terrorist propaganda ("No to the Coup, Democracy Now" rally, Van, 1 August 2016). These are in addition to the 2 years and 6 months sentence imposed on 28 May 2021 (Ankara 25th Assize Court) for remarks at a 7 January 2020 hearing, later reclassified on 25 April 2022 as "threatening by making use of the fearsome force of presumed criminal organizations,". See 1501st meeting (June 2024) (DH) - Rule 9.1 Communication from the applicant (31/05/2024), paras 12–26, Selahattin Demirtaş v. Turkey (no. 2), Application No. 14305/17, https://hudoc.exec.coe.int/?i=DH-DD(2024)622E.

example, he has been in May 2021,[228] July 2024[229] been convicted publicly under different charges but all concerning his political speeches as MP.

This pattern of reclassifying past conduct under harsher charges or even similar charges reveals how the authorities have secured a way to ensure Demirtaş's continued imprisonment. While the ECtHR's assessment is necessarily limited to the facts at hand, the domestic legal manouvres keep evolving, ensuring all his speeches from the last twenty years remain grounds for ongoing criminal liability. His release seem almost procedurally unattainable. It can be argued that this kind of persistent threat can be claimed to amount ill-treatment as argued in the latest communicated Kavala case.[230]

4.3.Following the Yüksekdağ judgment

This judgment was finalised on 03.04.2023. Yüksekdağ was also part of the Kobane trials as repeatedly mentioned, charged with being the instigator of the events of October 2014, alongside Demirtaş, the other co-chair. The trial court, while reviewing her detention from 20 September 2019, referred to the Court's findings at its hearing on 10 May 2023 alleging that it was based on different charges, facts and new evidence.[231] The trial court, in particular, the trial court relied on the statements of the witnesses Mahir, K.G., M.R.O. and the defendant İ.B. and A.T.[232]

At the same time with Demirtaş, the Ankara 22nd Assize Court sentenced Yüksekdağ to a total of 33 years and 3 months in prison effectively ensured her continued detention as well. She was also convicted of *'aiding'* under Article 302 § 1 of the TCC and Article 204 both of which were addressed in the ECtHR judgment.[233]

4.4.Another Demirtaş judgment and what it means

Around the time of submission of the thesis, the Court delivered another Demirtaş judgment evidently verifying the findings of this thesis.[234] This time around, the Court, before examining the 20 September 2019 detention separately, first addressed whether the charges brought against Demirtaş concerned the same facts already examined in the GC judgment of 22 December 2020, in great detail. As expected, the Turkish government claimed that he had been detained on new charges since 2019. However, the Court divided its analysis into two steps to

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[228] ibid.: Earlier, on 28 May 2021, the Ankara 25th Assize Court had sentenced Demirtaş to two years and six months under Article 6 § 1 of the Prevention of Terrorism Act for criticising Ankara Chief Public Prosecutor Yüksel at a hearing on 7 January 2020. That conviction was later reclassified: on 25 April 2022, the Ankara Regional Court of Appeal ruled that he should instead have been convicted of "threatening by making use of the fearsome force of presumed criminal organizations."

[229] ibid: On 20 July 2024, the Mersin 14th Criminal Court of First Instance sentenced him to 5.5 years for "insulting the organs of the Republic of Turkey" and "inciting hatred and enmity," based on speeches from 2015–2016. In July 2025, the Diyarbakır Chief Public Prosecutor's Office filed yet another indictment, seeking up to 15 years in prison and a political ban over seven speeches from 2016; the Diyarbakır 18th Criminal Court accepted the case and set the first hearing for 24 September 2025.

[230] See n 217.

[231] 1501st meeting (June 2024) (DH), Rule 9.1 – Communication from the applicant (03 May 2024) concerning the case of *Yüksekdağ Şenoğlu and Others v Türkiye* (Application No 14332/17) (*Selahattin Demirtaş (No 2) group*, Application No 14305/17), https://hudoc.exec.coe.int/?i=DH-DD(2024)632E.

[232] ibid.

[233] ibid para 9: Specifically, the court found her guilty of propaganda based on a speech delivered on 19 July 2015, an interview given to a German press outlet on 8 August 2015, and statements made at the funeral of Mehmet Tunç and Orhan Tunç on 1 March 2016, for which she was sentenced to 1 year and 6 months, considering the intent, motive, and gravity of the crime. Additionally, she was convicted of inciting or encouraging an illegal assembly during a press conference held on 31 December 2015 under Article 34 of Law No. 2911 on Meetings and Demonstrations, and of making propaganda for a terrorist organization on 11 April 2015.

[234] *Selahattin Demirtaş v Turkey (No 4)* App no 13609/20, 8 July 2025

provide a clear differentiation: first, whether the facts and charges overlapped with those in the 2020 judgment; second, whether there were plausible grounds to suspect Demirtaş of the alleged offences.[235]

4.4.1. On the connection between the facts and the charges

The Court, in a very clear manner, explained that the GC judgment had already found that the 2016 and 2019 detentions were factually, temporally, and materially linked, both tied to the 6–8 October 2014 events.[236] It directly addressed the matter of reclassification comparing the charges under Articles 214 §§1, 3 and 302 of the Criminal Code, and Articles 214 §1, 3 are unarguably linked.[237] The Court concluded the tweets and speeches underlying both detention orders were identical, and no plausible causal link had been shown in the GC judgment,[238] yet the trial court did not address this overlap or explain why the charges were reclassified.

Despite this, the Court still went on to examine whether new factual elements unknown at the time of initial detention, justified the 2019 order.

4.4.2. On the evidence presented by the prosecution

Apparently, in order to differentiate clearly, the Court grouped the evidence provided by the government into three following categories: (1) the group of evidence already assessed by the Grand Chamber; (2) material from before 20 September 2019, but not part of the 2016 order; (3) evidence obtained after the 2019 detention.[239] For the first group, the Court recalled the HDP's tweets on 6 October 2014, Demirtaş's speech on 9 October 2014, a PKK/KCK tweet, and KCK statements had already been found lawful.[240] For the second group of evidence, the so-called new evidence was examined. Relying on the complaint of a citizen, B.M. from 3 October 2014 complaint, Demirtaş's 30 September 2014 speech, suspect statements from early 2019, the Court found no evidence directly linking Demirtaş to instigation. As for the third group with respect to evidence obtained after detention — such as anonymous witness statements with the code name Mahir, an *active repentance* witness K.G., HTS phone records, PYD messages, and HDP delegation activities — related mostly to political efforts within the peace process known to state authorities at the time, and did not show a concrete causal link to the violence.

4.4.3. Final Assessment and Implications for Yüksekdağ

These findings may have direct effect and relevance for Figen Yüksekdağ, as well. This latest judgment both addressed the inital detention, which is based on similar facts with her case, as well as the second detention, which relies on the *identical* facts with her case.

The Court, once again, but this time, in a clearer manner, reiterated that the 2019 charges were built on the very same facts already assessed, with no convincing new evidence.[241] Considering all of the evidence submitted throughout the entire proceedings, the Court found Demirtaş's calls on Kobane, made in the context of international concern and the peace process, stayed within lawful political discourse. Despite the government's procedural mimicry and legal creativity, the ECtHR unequivocally concluded that these allegations were entirely unfounded and seriously flawed in legal terms. However, given that the infringement proceedings in

[235] ibid para 209.
[236] *Selahattin Demirtaş v Turkey (no 2)* [GC], paras 440–441.
[237] *Selahattin Demirtaş v Turkey (No 4),* paras 210–224.
[238] *Selahattin Demirtaş v Turkey (no 2)* [GC], paras 327, 331
[239] *Selahattin Demirtaş v Turkey (No 4),* paras 225–237.
[240] ibid paras 238–247.
[241] ibid paras 255–257.

Kavala's case ultimately led to no tangible outcomes, the implications of this judgment remain regrettably uncertain.

5. Final Reflection: Where Does Accountability Lie?

This thesis has attempted to trace the trajectory of Türkiye's responses to three landmark judgments of politically motivated detentions. Through a detailed case analysis for each individual, and a close review of the CM supervision process, it was argued that Turkish authorities masked their deliberate non-compliance or symbolic compliance with procedural mimicry. This game of compliance reveals how a state can exploit the structural weaknesses of the CoE system while remaining legitimate.[242]

A key finding of this research is that Türkiye has not simply ignored its international obligations. It has rather actively engaged with the ECtHR and CM processes through a well-articulated blend of legal, procedural, and rhetorical tactics. As explained in detail, these tactics mainly contain the recharacterization of charges, the fragmentation of legal processes across multiple courts. Also, new legal justifications were generated, while formally distinct, these were substantively tied to the same political objectives previously condemned by the Court. This is not passive resistance but an evolving strategy of evasion. This strategy has enabled the Turkish authorities to claim, in every communication to the CM over the years, that the so-called core of the judgments has been addressed, while the underlying reality remains unchanged: political imprisonment.

Manifestly, this persistence of this strategy does not merely rely on the ingenuity of the Turkish authorities but the permissive design of the CM enforcement mechanism itself. As a consensus-based political body, the CM lacks coercive tools to ensure compliance and relies instead on dialogue, peer pressure, and reputational costs. Even in cases of clear and persistent non-compliance, as seen in the Kavala infringement proceedings, the CM's strongest tools are interim resolutions, high-level dialogues, and the symbolic threat of sanctions — none of which have proven effective against determined defiance.

The system's foundational reliance on good-faith cooperation becomes a liability when confronted with bad-faith actors. In essence, the CM has no answer to governments that master the art of *compliance without compliance*. Relying on the above-provided engagements before the CM, the thesis also highlights the limitations of the CM's legal and procedural framework: the absence of binding deadlines, the lack of automatic escalation mechanisms, and the political nature of its decisions. While the infringement procedure was designed as a quasi-judicial tool to increase accountability, its use in Kavala showed its limits. Without clear consequences, even a formal finding of non-compliance under Article 46 § 4 failed to produce results. The risk, therefore, is that the CM becomes less of a supervisor and more of a place for endless diplomatic ritual.

These Turkish cases, in the end, expose a deeper problem. Evidently, despite years of enhanced supervision, the CM has failed to secure the release of the three applicants. This raises the *very worrying* possibility that the very foundation of the CoE ecosystem permits or perhaps even encourages authoritarian-leaning states to play the compliance game indefinitely. In other words, as long as a government continues to engage procedurally, submit action plans, and participate in technical dialogues, it can shield itself from more serious political repercussions, even as it undermines the substantive rights guaranteed by the Convention. The Turkish authorities have been doing just that. If the most institutionalized and praised regional human rights regime cannot enforce its judgments in clear cases of political repression, then its

[242] Both Russia and Turkey tried at first to appeal to Western values. Suat Kınıklıoğlu, *Turkey and Russia: Aggrieved Nativism Par Excellence* (Turkey Analyst, May 10, 2017), archived at http://perma.cc/ 6CVR-LUVN.

normative authority and deterrent power are, apparently, in jeopardy. The Turkish cases suggest that the Convention ecosystem, designed for cooperative enforcement among democracies, is ill-suited to address the modern autocratic regimes manoeuvres, evidently, creating a structural permissiveness.

One could argue that, at its heart, this is a crisis of good faith. The Convention system relies on the presumption, that states will apply restrictions only for legitimate aims, and not for ulterior purposes. The system also relies on another presumption that they will execute the final judgments of the Court, in good faith, as mandated under Article 46. The question is what happens when the bad faith of the national authorities that governs underlying reasons of the detentions, follow into the execution stage. This study aimed to reveal the answer: the system collapses. Why would national authorities that use detention for political motives show good faith in a supervision mechanism that has no binding force? Bad faith in initial motives obviously follow into bad faith in the execution stage.

In conclusion, Türkiye's responses to the ECtHR's Article 18 judgments are emblematic of a broader crisis in the CoE human rights system. Through a mix of symbolic compliance and strategic legalism, the Turkish authorities have managed to keep Kavala, Demirtaş and Yüksekdağ imprisoned. The fact that these individuals have been in detention for almost a decade, the CM supervision raises major concerns about the capacity of the CoE system to defend its core values. This entire picture points to the urgent need for institutional reform. Either with clearer procedural benchmarks, stronger political consequences, or, perhaps, most critically, a rethinking of the assumption that dialogue alone can secure compliance, a new path is needed. Without such changes, the compliance game will continue, to the detriment of the Convention ecosystem.

Bibliography

Table of Cases

Ahmet Hüsrev Altan v Turkey App no 13252/17 (ECtHR, 13 April 2021)

Demirtaş v Turkey (no 2) [GC] App no 14305/17 (ECtHR, 22 December 2020)

Demirtaş v Turkey (no 4) App no 13609/20 (ECtHR, 8 July 2025)

Gusinskiy v Russia App no 70276/01 (ECtHR, 19 May 2004)

Ilgar Mammadov v Azerbaijan App no 15172/13 (ECtHR, 22 May 2014)

Ilgar Mammadov v Azerbaijan (infringement proceedings) [GC] App no 15172/13 (ECtHR, 29 May 2019)

Kavala v Turkey App no 28749/18 (ECtHR, 10 December 2019)

Kavala v Turkey (infringement proceedings) [GC] App no 28749/18 (ECtHR, 11 July 2022)

Lutsenko v Ukraine App no 6492/11 (ECtHR, 3 July 2012)

Merabishvili v Georgia [GC] App no 72508/13 (ECtHR, 28 November 2017)

Sabuncu and Others v Turkey App no 23199/17 (ECtHR, 10 November 2020)

Scozzari and Giunta v Italy App no 39221/98 (ECtHR, 13 July 2000)

Şık v Turkey (no 2) App no 36493/17 (ECtHR, 24 November 2020)

Tymoshenko v Ukraine App no 49872/11 (ECtHR, 30 April 2013)

Yüksekdağ Şenoğlu and Others v Turkey App nos 14332/17 and others (ECtHR, 8 November 2022)

Legislation and Treaties

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended)

Law No 7188 on Amendments to the Code of Criminal Procedure and Certain Laws (Official Gazette, 17 October 2019)

Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 1 November 1998)

Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 1 June 2010)

Protocol No 15 to the Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force August 2021)

Books

Carolyn Ferstman, Conceptualising Arbitrary Detention: Power, Punishment and Control (1st edn, Bristol University Press 2024)

Michael O'Boyle, Paul Mahoney and Rachael Kondak, Law of the European Convention on Human Rights (OUP 2021)

Steven Levitsky and Lucan A Way, Competitive Authoritarianism: Hybrid Regimes after the Cold War (Cambridge University Press 2010)

Book Chapters

P Wennerås, 'Making Effective Use of Article 260 TFEU' in A Jakab and D Kochenov (eds), The Enforcement of EU Law and Values: Ensuring Member States' Compliance (Oxford, 2017; online edn, Oxford Academic, 20 April 2017)

Journal Articles

A Batory, 'Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU' (2016) 94 Public Administration 685

Başak Çalı, 'The Present and the Future of Infringement Proceedings: Lessons Learned from Kavala v Türkiye' (2023) 2 ECHR Law Review 157

B Çali and A Koch, 'Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe' (2014) 14(2) Human Rights Law Review 314

F de Londras and K Dzehtsiarou, 'Mission Impossible? Addressing Non-Execution through Infringement Proceedings in the European Court of Human Rights' (2017) 66(2) ICLQ 467

Hillebrecht, 'Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights' (2012) 13 Human Rights Law Review 279

Helen Keller and Barbara Marti, 'Reconceptualizing Implementation: The Judicialization of the Execution of the European Court of Human Rights' Judgments' (2015) 26(4) Eur J Intl L 829

Helen Keller and Viktoriya Gurash, '"Upping the Ante": Rethinking the Execution of Judgments of the European Court of Human Rights' (2023) (2) EHRLR 153

Kim Lane Scheppele, 'Autocratic Legalism' (2018) 85(2) U Chi L Rev 545

Kos UA, 'Controlling the Narrative: Hungary's Post-2010 Strategies of Non-Compliance before the European Court of Human Rights' (2023) 19(2) European Constitutional Law Review 195

LR Helfer, 'Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime' (2008) 19(1) EJIL 125

Madsen MR, 'Rebalancing European Human Rights: Has the Brighton Declaration Engendered a New Deal on Human Rights in Europe?' (2018) 9(2) Journal of International Dispute Settlement 199

Steven Levitsky and Lucan A Way, 'The Rise of Competitive Authoritarianism' (2002) 13(2) Journal of Democracy 51

Vusal Mehdiyev, 'The Enforcement of European Court of Human Rights Judgments in Council of Europe Member States' (25 December 2024) SSRN <http://dx.doi.org/10.2139/ssrn.5072054>

Zafer Yılmaz, 'Erdoğan's Presidential Regime and Strategic Legalism: Turkish Democracy in the Twilight Zone' (2020) 20(2) Southeast European and Black Sea Studies 265

Web Sources

All Council of Europe and Committee of Ministers documents cited in footnotes, using their detailed references and URLs.