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Meeting: 1531st meeting (June 2025) (DH)

Communication from NGOs (Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists) (26/05/2025) concerning the case of Kavala v. Türkiye (Application No. 28749/18) and reply from the authorities (04/06/2025).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1531^e réunion (juin 2025) (DH)

Communication d'ONG (Turkey Human Rights Litigation Support Project, Human Rights Watch et International Commission of Jurists) (26/05/2025) relative à l'affaire Kavala c. Türkiye (requête n° 28749/18) et réponse des autorités (04/06/2025) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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

EXECUTIVE SUMMARY

This submission provides updates on the measures required for the implementation of *Kavala v. Turkey* and the Article 46(4) judgment in that case, concerning the arrest and prolonged detention of human rights defender Osman Kavala, based on the Government's latest submissions and recent developments in Türkiye.

Individual measures: The European Court of Human Rights ("the ECtHR")'s 2019 and 2022 judgments, which vitiate the charges related to the Gezi Park events, impose an unconditional obligation on Türkiye to release Mr. Kavala, detained for seven and a half years. His arbitrary conviction and aggravated life sentence on charges of "attempting to overthrow the Government", imposed subsequently to the ECtHR's judgments, must also be quashed. In its latest submissions to the Committee of Ministers ("the Committee"), Türkiye fails to indicate any measures it intends to take in this respect. Recent arrests and detentions in connection with the Gezi Park protests highlight the Turkish Government's continued lack of good faith in relation to this case. Türkiye's obligation to release Mr. Kavala is immediate and independent of the legal proceedings currently pending before the Turkish Constitutional Court and the ECtHR.

General measures: Türkiye continues to resist or disregard key recommendations to ensure the independence of the Turkish judiciary, including reforms to ensure the structural independence of the Council of Judges and Prosecutors in line with international standards. Repeated non-implementation of Constitutional Court judgments remains a serious concern. Systematic undue interferences in decisions affecting the career of judges and prosecutors call for effective safeguards ensuring that such decisions are based on objective criteria and a transparent process.

The NGOs are alarmed by a deepening repression of dissent and recent waves of mass arbitrary detentions targeting human rights defenders, lawyers, opposition politicians,

peaceful protestors and others. These form part of a baseless narrative framing human rights advocacy and legitimate political opposition as criminal and unlawful. Through capture of key judicial positions and institutions, the governing coalition is suppressing the exercise of Convention rights, and effective remedies are systematically denied. These developments are antithetical to the general measures required in this case and threaten the effectiveness of the entire Convention system.

Recommendations: Regarding individual measures, the NGOs urge the Committee to set out concrete measures in response to Türkiye's sustained non-implementation of a rare violation of Article 18, subsequently followed by a violation of Article 46(1). These steps could include joint complementary proceedings or pursuing other available measures within the Committee's mandate. They provide additional recommendations to ensure an end to Osman Kavala's detention and political persecution. Regarding general measures, Türkiye should address key recommendations to ensure judicial independence. It should end escalating abuse of arbitrary detention and criminal proceedings to stifle and retaliate against legitimate exercise of Convention rights and restore an enabling environment for the defence and promotion of human rights.

I. INTRODUCTION

1. This communication is submitted by the Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists ("the NGOs") pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments. It provides updates on the implementation of individual and general measures in *Kavala v Turkey* and Article 46(4) infringement proceedings in the case of *Kavala v Türkiye*. It also offers recommendations to the Committee of Ministers ("the Committee"), drawing on previous and unimplemented recommendations made jointly by the NGOs.¹
2. The case concerns the arrest and pre-detention of businessperson and human rights defender Osman Kavala in October 2017, who was accused of "attempting to overthrow the Government and constitutional order" (Articles 312 and 309 of the Turkish Criminal Code (TCC)) within the context of the 2013 Gezi Park protests and the attempted coup d'état of July 2016. The European Court of Human Rights ("the ECtHR" or "the Court") found in *Kavala v. Turkey* that Mr. Kavala's arrest and pre-trial detention lacked reasonable suspicion, unduly targeted his civil society work, and aimed to silence him and deter human rights defenders, thereby violating Articles 5(1), 5(4) and 18 of the European Convention on Human Rights ("the Convention"). Türkiye's failure to release him pursuant

¹ Rule 9.2 submission by the Turkey Human Rights Litigation Support Project and Human Rights Watch concerning the case of *Kavala v. Türkiye* (Application No. 28749/18), 17 January 2025, 1521st meeting of the Committee of Ministers (March 2025) (DH) DH-DD(2025)98 ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2025\)98E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2025)98E)); Rule 9.2 submission by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists concerning the case of *Kavala v. Türkiye* (Application No. 28749/18), 26 January 2024, 1492nd meeting of the Committee of Ministers (March 2024) (DH), DH-DD(2024)263 ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2024\)263E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)263E)).

to the Court's judgment led to Article 46(4) infringement proceedings, where the Grand Chamber on 11 July 2022 confirmed that Türkiye was in violation of Article 46(1). The case remains under the enhanced supervision of the Committee.

II. INDIVIDUAL MEASURES

3. Osman Kavala has now been detained for a total of seven and a half years. Over five years have passed since the Court first requested his immediate release (10 December 2019), and nearly three years since the Court found of a violation under Article 46(1). He is currently serving an aggravated life sentence following his final conviction in September 2023 on charges of "attempting to overthrow the Government" (Article 312 TCC).
4. Mr. Kavala's continued detention and aggravated life sentence are plainly incompatible with the Grand Chamber's finding that the Article 18 violation in the *Kavala* judgment "*vitiating ... the charges related to the Gezi Park events and the attempted coup*".² In its submissions ahead of the Committee's 1521st meeting, following the NGOs' January 2025 Rule 9.2 submission, the Turkish Government failed to indicate any steps towards compliance with the Court's judgement, including with respect to his mandatory release or to address the ongoing Convention violations. It instead errantly cited pending applications before the Constitutional Court and the ECtHR as a reason to avoid implementing the ECtHR's clear judgments.³ Türkiye's Action Plan of 28 March 2025, submitted ahead of the Committee's 1531st meeting (June 2025), also includes no information on individual measures.⁴
5. In its 6 March 2025 decision, the Committee confirmed that "*Türkiye remains in serious breach of its obligations under the Convention and the principle of the rule of law until Mr Kavala is released*"⁵ and "*deeply deplored*" the lack of progress.⁶ Although the Committee referred to a possible friendly settlement concerning Mr. Kavala's pending ECtHR application or a prompt and Convention-compliant ruling by the Constitutional Court on his pending applications as potential avenues for implementation, the NGOs stress that Türkiye's obligation to release Mr. Kavala and quash his arbitrary conviction remains **unconditional** under the ECtHR 2019 and 2022 judgments. Allowing this obligation to

² ECtHR, *Proceedings under Article 46§4 in the case of Kavala v Türkiye* [GC] (Application no. 28749/18, 11 July 2022), para. 145 and para. 172. See also Rule 9.2 submission by the Turkey Human Rights Litigation Support Project and Human Rights Watch of 17 January 2025 (supra n 1), para. 5-6.

³ Rule 9.6 reply from the authorities following communications from NGOs (10/02/2025 and 17/01/2025) in the case of *Kavala v. Türkiye* (Application No. 28749/18), 19 February 2025, 1521st meeting of the Committee of Ministers (March 2025) (DH) DH-DD(2025)98, paras. 4-5 ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2025\)209E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2025)209E)); Rule 8.2a communication from the authorities concerning the case of *Kavala v. Türkiye* (Application No. 28749/18), 11 February 2025, 1521st meeting of the Committee of Ministers (March 2025) (DH) DH-DD(2025)98, paras. 8-10 ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2025\)158E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2025)158E)).

⁴ Action Plan of 28 March 2025 by Türkiye concerning the case of *Kavala v. Türkiye* (Application No. 28749/18), DH-DD(2025)374, 1531st meeting of the Committee of Ministers (June 2025), see para. 3 ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2025\)374E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2025)374E)).

⁵ Committee decision CM/Del/Dec(2025)1521/H46-32 of 6 March 2025, H46-32 *Kavala v. Türkiye* (Application No. 28749/18), 1521st meeting of the Committee of Ministers (March 2025) (DH), para. 3.

⁶ *Ibid.*, para. 4.

hinge on future legal proceedings risks further delay and perpetuates ongoing violations of his Convention rights.⁷

6. The NGOs urge the Committee to set out concrete measures it will take in response to Türkiye's sustained non-implementation of a rare Article 46(1) violation finding – such as joint complementary proceedings or other available measures. Türkiye's conduct not only violates Mr. Kavala's rights but also risks undermining the integrity of the Convention system. The recent arrest of at least two prominent individuals - with one already facing trial - for their alleged links to the Gezi Park protests and to Mr. Kavala further calls into question the Turkish authorities' good faith and is discussed in paragraphs 20-25 below.⁸

III. GENERAL MEASURES

Independence and impartiality of the judiciary

7. The NGOs' previous submissions to the Committee on this case contain their detailed assessment on the lack of independence of the Turkish judiciary, particularly the structural dependence of the Council of Judges and Prosecutors ("the CJP"), which remains subject to political influence and control, and its effective capture by the ruling political parties.⁹ In its decision of 6 March 2025, the Committee stressed the need to reform the CJP to ensure its independence, referencing the 9 December 2024 Opinion by the Venice Commission¹⁰ which confirms the need for changes in the composition of this body.¹¹
8. While the Government's Action Plan of 28 March 2025 claims that the Judicial Reform Strategy of 2025-2029 aims to reconsider the structure of the CJP, it continues to resist or

⁷ On the connection between Türkiye's resistance to implementation and delays in the Constitutional Court judgments, see Rule 9.2 submission by the Turkey Human Rights Litigation Support Project and Human Rights Watch concerning the case of Kavala v. Türkiye (Application No. 28749/18), 17 January 2025 (supra n 1), para. 8.

⁸ See for instance BBC News Türkçe, 'Soruşturmalar hakkında neler biliniyor?', 19 March 2025 (<https://www.bbc.com/turkce/articles/cp8ypg6l43po>).

⁹ See Rule 9.2 submission of 17 January 2025 by the Turkey Human Rights Litigation Support Project and Human Rights Watch (supra n 1), paras. 10-16; Rule 9.2 submission of 26 January 2024 by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists (supra n 1), paras. 26-57. See also Human Rights Watch, the International Commission of Jurists, and the Turkey Human Rights Litigation Support Project, "Flouting the European Court of Human Rights and Bringing Domestic Courts to Heel: Türkiye's Collision Course with the Council of Europe, January 2025, pp. 4-9 (<https://www.hrw.org/news/2025/01/24/flouting-european-court-human-rights-and-bringing-domestic-courts-heel>)

¹⁰ European Commission for Democracy through Law (Venice Commission), Türkiye – Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, adopted by the Venice Commission at its 141st Plenary Session (Venice, 6-7 December 2024), CDL-AD(2024)041, 9 December 2024 (<https://www.coe.int/en/web/venice-commission/-/cdl-ad-2024-041-e>).

¹¹ Committee of Ministers decision CM/Del/Dec(2025)1521/H46-32 of 6 March 2025, H46-32 Kavala v. Türkiye (Application No. 28749/18), 1521st meeting of the Committee of Ministers (March 2025) (DH), paras. 10-11.

disregard the key recommendations of the Venice Commission,¹² which closely echo the NGOs' recommendations, as essential steps toward genuine reform.¹³

9. First, the Action Plan claims that the CJP delivers decisions of an administrative nature and therefore cannot serve as a tool of executive pressure.¹⁴ This downplays the role of judicial councils in safeguarding judicial independence and the rule of law.¹⁵ As detailed in the NGOs' previous submissions and the Venice Commission's Opinion, the CJP's powers – for example, in relation to disciplinary proceedings and judicial appointments – are regularly used to influence and exert pressure on the judiciary.¹⁶ The NGOs recall that the executive can effectively select at least 10 of the CJP's 13 members, enabling strong political influence or control over the judiciary.¹⁷ Furthermore, according to Article 159 of the Turkish Constitution, decisions of the CJP, other than dismissals from the profession, are not subject to judicial review. In the case of *Oktay Alkan v. Türkiye*, the Government argued that this was justified given that the CJP, following the constitutional amendment of 2017, is composed mostly of judges and operates independently. The ECtHR rejected this argument.¹⁸ If, as the Government maintains, the CJP is not a judicial body, then the lack of judicial oversight over its decisions is even more concerning, as it removes a critical safeguard against political influence in judicial appointments and careers.
10. Second, the Government argues that peer election of members of the CJP had been “rendered controversial”, citing alleged links to criminal organisations and disruption within the judiciary.¹⁹ Yet, this claim has not been substantiated, nor has any causal link between peer election and such allegations been shown. Even if there were to be merit in the allegations, the appropriate remedy would be to address the particular cases and not to throw out the entire system of peer election. Electing at least half of members of judicial governance bodies such as the CJP by their peers is an essential safeguard against

¹² See Venice Commission Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (supra n 10), paras. 120-121.

¹³ See also International Commission of Jurists and the Human Rights Joint Platform (İnsan Hakları Ortak Platformu - İHOP), “Turkey’s Judicial Reform Strategy and Judicial Independence” (2019) (<https://www.icj.org/wp-content/uploads/2019/11/Turkey-Justice-Reform-Strat-Advocacy-Analysis-brief-2019-ENG.pdf>).

¹⁴ Action Plan of 28 March 2025 (supra n 4), para. 19.

¹⁵ See Consultative Council of European Judges (CCJE), Opinion no.10(2007) on the Council for the Judiciary at the Service of Society, para. 8.

¹⁶ See Venice Commission, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, 9 December 2024 (supra n 10), para. 52; Rule 9.2 submission of 17 January 2025 by the Turkey Human Rights Litigation Support Project and Human Rights Watch (supra n 1), para. 15; Rule 9.2 submission of 26 January 2024 by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists (supra n 1), paras. 35-42. See also Joint Third Party Intervention by Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists in *Osman Kavala v Türkiye* (no. 2) (App No. 2170/24), para. 10 (available at <https://www.turkeylitigationssupport.com/s/Kavala-v-Turkiye-2-Third-Part-Intervention-by-TLSP-HRW-ICJ.pdf>).

¹⁷ Venice Commission, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, 9 December 2024 (supra n 10), para. 118.

¹⁸ ECtHR, *Oktay Alkan v. Türkiye*, no. 24492/21, 20,09,2023, paras. 67-68.

¹⁹ Action Plan of 28 March 2025 (supra n 4), para. 13.

executive and legislative interference, as clearly affirmed in the Venice Commission's Opinion and is a requirement set out in Council of Europe and other international standards, without qualification as to national circumstances.²⁰

11. Third, the Government disputes recommendations to remove the Minister and Undersecretary of Justice from the CJP, arguing that executive representation does not necessarily undermine the independence of judicial councils, and that similar arrangements exist in other countries.²¹ However, the Venice Commission makes it clear that in the context of Türkiye – where the President, an openly political figure, appoints both officials, and the Minister presides over and is deeply involved in the CJP's work – this arrangement poses *“a substantial risk to the separation of powers and the independence of the judiciary”*, while also undermining *“the appearances of independence of the CJP”*.²²
12. Furthermore, the Action Plan continues to rely on arguments already addressed and refuted in the NGOs' previous submissions and by the Venice Commission.²³ It misrepresents the Venice Commission's 2010 recommendations by suggesting that the constitutional amendment of 2017 changing the composition and structure of the CJP aligns with them,²⁴ while omitting the crucial point that election by members of parliament should replace appointments by the executive, not election by the judiciary.²⁵
13. Similarly, the Government refers again to Resolution on the Principles of Promotion of Judges and Prosecutors of 2020,²⁶ despite significant evidence that judges and prosecutors who violate Convention rights are routinely promoted, while those acting to uphold Convention standards face sanctions, transfers, dismissals, and even detention.²⁷ The March 2025 Action Plan fails to demonstrate that the amendment is applied in a way

²⁰ Venice Commission Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (supra n 10), para. 120. See also, Council of Europe, Committee of Ministers, Rec (2010) 12 of the Committee of Ministers on Judges: Independence, Effectiveness and Responsibilities, paras 46, 48; European Charter on the Statute for Judges, Principle 1.3; International Association of Judges, Universal Charter of the Judge, 2017, Articles 2 and 3; Consultative Council of European Judges (CCEJ), Opinion No.10 (2007) on the Council for the Judiciary at the Service of Society (supra n 15), paras 15-18; CCEJ, Magna Carta of Judges, 2010 para.13; ECtHR, *Tuleya v Poland*, App No 21181/19 (6 July 2023), paras 337 – 345.

²¹ Action Plan of 28 March 2025 (supra n 4), para. 19.

²² Venice Commission Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (supra n 10), para. 54, paras. 98-99, and para. 118.

²³ See *ibid.*, paras. 34, 45, 118, and 120.

²⁴ The NGOs have already addressed identical arguments made in previous Action Plans in the Rule 9.2 submission by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists of 26 January 2024 (supra n 1), paras. 26-28.

²⁵ Action Plan of 28 March 2025 (supra n 4), para. 10. See Venice Commission Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (supra n 10), paras. 34, 45, 118, and 120.

²⁶ Action Plan of 28 March 2025 (supra n 4), para. 16;

²⁷ Rule 9.2 submission by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists of 26 January 2024 (supra n 1), paras. 35-42.

that promotes compliance with Convention standards or prevents promotions based on rights violations.

14. Therefore, the Action Plan reveals a continued lack of good faith in addressing the CJP's structural flaws. In such circumstances, the NGOs consider that the Judicial Reform Strategy of 2025-2029 will necessarily fail to tackle the entrenched lack of structural independence, which has enabled judicial capture by the ruling political coalition over the past decade.²⁸
15. Furthermore, the NGOs reiterate their concern at the ongoing non-implementation of Constitutional Court judgments by judicial and other State authorities, particularly concerning arbitrary detention. The NGOs have previously discussed in detail the high-profile case of imprisoned Member of Parliament (MP) Can Atalay.²⁹ This is not an isolated incident, and similar cases continue to be reported.³⁰ Such practices seriously undermine the rule of law and the functioning and independence of the judiciary, a core element of which is that the political branches of government and other judicial authorities are bound to respect its decisions.
16. The NGOs note that the Committee's 6 March 2025 decision omits the crucial issue of recruitment of members of the judiciary.³¹ The current recruitment process lacks adequate criteria and safeguards against executive interference, prioritising political affiliations over objective merit³² and further undermining the independence of the judiciary in Türkiye. More broadly, decisions affecting the career of judges and prosecutors must be based on objective criteria and a transparent process.³³ Structural reforms to the CJP must be accompanied by concrete safeguards to prevent politically and personally motivated interference in such decisions.

Silencing legitimate free expression and systematic denial of Convention rights

17. Addressing the suppression of the exercise of Convention rights through the political instrumentalisation of the judiciary and the systematic denial of the right to effective remedy is a core aspect of general measures required in this case. The violation of Mr. Kavala's rights under Articles 5 and 18, as well as Article 46 of the Convention, exemplifies the widespread misuse of detention and criminal proceedings for political reasons against

²⁸ See further HRW, ICJ, TLSP, "“Flouting the European Court of Human Rights and Bringing Domestic Courts to Heel” (supra n 9).

²⁹ Ibid., pp. 11-12.

³⁰ See for example: Bianet, "Court rejects release of 32-year prisoner despite top court ruling", 22 April 2025 (<https://bianet.org/haber/court-rejects-release-of-32-year-prisoner-despite-top-court-ruling-306699>).

³¹ See Rule 9.2 submission of 17 January 2025 by the Turkey Human Rights Litigation Support Project and Human Rights Watch (supra n 1), paras. 17-18; Rule 9.2 submission of 26 January 2024 by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists (supra n 1), paras. 30-33.

³² Rule 9.2 submission of 26 January 2024 by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists (supra n 1), paras. 34-36; see also Third Party Intervention by TLSP, HRW, and ICJ in *Kavala v Türkiye* (no.2) (supra n 16), para. 16.

³³ See e.g. ECtHR, *Bilgen v Turkey*, no. 1571/07, 9 March 2021, para. 63.

human rights defenders and others perceived as threats to the ruling political coalition's interests, along with pressure by the executive on the judiciary in such cases, and the dismantling of effective remedies.³⁴

18. The NGOs submit that there prevails a climate of deepening repression, marked by recurrent waves of arbitrary and politically motivated detentions. Notably, on 23 January 2025, lawyer Fırat Epözdemir, a member of the executive board of the Istanbul Bar Association, was arrested upon his return from an advocacy visit to Council of Europe institutions. He remains in pre-trial detention on "terrorism-related" charges.³⁵ In addition, a criminal investigation was launched against the leadership of the Istanbul Bar Association – including its President, İbrahim Kaboğlu – following a statement it issued on the deaths of two Kurdish journalists in northern Syria, highlighting potential violations of international humanitarian law and calling for an effective investigation.³⁶ An indictment was subsequently filed against the Bar Association's President and executive board members for alleged "terrorist propaganda", with a hearing scheduled for May 2025. This was followed by a separate lawsuit which led to their dismissal on 21 March 2025, pending appeal.³⁷
19. These developments suggest an alarming escalation in the targeting of legal professionals for human rights advocacy. The Government's Action Plan quotes a speech by the Minister of Justice claiming that civil society's human rights advocacy efforts aim to influence the judiciary and are "*contrary to the spirit of democracy and the principle of the rule of law*".³⁸ This reflects a dangerous narrative framing human rights advocacy as criminal, unlawful, or anti-democratic, as embodied in practice by the targeting of the Istanbul Bar Association.
20. The resurgence of arbitrary arrests, unwarranted criminal proceedings, and other repressive measures as part of the recent widening of the ongoing investigation into the Gezi Park protests of 2013, over a decade after the events, indicates that Türkiye is not only failing to implement the general measures required by this judgment, but is actively undermining them by continuing its repression of those demanding respect for human rights, democracy, and the rule of law. For example, journalist İsmail Saymaz was placed under house arrest on 19 March 2025 for his alleged involvement in the Gezi Park

³⁴ See HRW, ICJ, TLSP, "“Flouting the European Court of Human Rights and Bringing Domestic Courts to Heel” (supra n 9).

³⁵ See "Joint Statement by the International Legal and Human Rights Community on the Actions Against the Istanbul Bar Association", co-signed by 56 international law and human rights organisations, 27 January 2025 (available at <https://www.turkeylitigationssupport.com/blog/2025/1/27/56-international-lawyers-and-human-rights-organisations-condemn-crackdown-on-istanbul-bar-associations-leadership-and-call-for-action>).

³⁶ Ibid. The statement is available at

<https://x.com/istbarosu/status/1870494653554029035?t=RMfysJjVEueD9SOTKt-qZw>.

³⁷ Bianet, "Court removes Istanbul Bar board over statement on killed Kurdish journalists", 21 March 2025 (<https://bianet.org/haber/court-removes-istanbul-bar-board-over-statement-on-killed-kurdish-journalists-305707>).

³⁸ Action Plan of 28 March 2025 (supra n 4), para. 28.

events.³⁹ His lawyers' access to his case file has reportedly been restricted, in violation of the right to a fair trial protected under the Convention.⁴⁰ The evidence invoked against him by the prosecutor's office includes his preparation of a website for Osman Kavala and contacts with defendants in the Gezi Park trial including Mr. Kavala and MP Can Atalay.⁴¹ Mr. Saymaz had documented human rights violations during the 2013 protests, including the killing of student Ali İsmail Korkmaz by police officers and counter-protestors.⁴²

21. The seemingly arbitrary arrest and detention of leading opposition figure and Istanbul mayor Ekrem İmamoğlu on 19 March 2025 based on alleged "corruption" and "terrorism-related activities", along with 99 others including journalists, municipal officials and businesspersons,⁴³ and a second wave of arrests targeting a further 53 municipal officials and civil servants in a further investigation against the opposition-held Istanbul Municipality,⁴⁴ further signal an escalation of repression by the Turkish Government of Convention rights protecting the exercise of freedom of expression and demands for the authorities to respect the rule of law, democracy and human rights.⁴⁵
22. The expanded Gezi Park investigations and the case against Mr. İmamoğlu are both led by A.G., former President of the Istanbul 14th Assize Court and Undersecretary of Justice, who also served as an *ex officio* member of the CJP. A.G. was appointed Chief Public Prosecutor of Istanbul by the CPJ ⁴⁶ in October 2024, and shortly thereafter widespread arbitrary arrests and detentions, some of which are detailed in paragraphs 20-21 above, followed. He has a well-founded reputation for his role in high profile cases targeting government critics and opposition figures. He presided over the Istanbul 14th Assize Court when it convicted opposition politician Selahattin Demirtaş and refused to implement Constitutional Court judgments ordering an end to unlawful criminal proceedings against

³⁹ See BBC Türkçe, 'House arrest for İsmail Saymaz: what do we know about the Gezi Park investigation?' (Turkish), 20 March 2025 (<https://www.bbc.com/turkce/articles/c8e72xnwx1ro>). See also the arrest, on 24 January 2025, and detention of Ayşe Barım, an agent and leading figure of the Turkish cinema industry, for having allegedly helped plan the protests (Bianet, 'Ayşe Barım arrested' (Turkish), 27 January 2025, at <https://bianet.org/haber/ayse-barim-tutuklandi-304003>), and the deportation on 2 April 2025 of German pianist Davide Mortello, known for playing the piano at Taksim Square in support of the Gezi Park protests in 2013 (Gerçek Gündem, "'Pianist of Gezi Park' deported' (Turkish), 3 April 2025, at https://www.gercekgundem.com/guncel/gezi-parkinin-piyaniisti-sinir-disi-edildi-528230#google_vignette).

⁴⁰ Ibid.

⁴¹ Birgün Daily, 'The first message from detained İsmail Saymaz: "I am clearly being silenced"', 20 March 2025 (<https://www.birgun.net/haber/the-first-message-from-detained-ismail-saymaz-i-am-clearly-being-silenced-608764>).

⁴² Ibid.

⁴³ See BBC News, 'Protests erupt in Turkey after Erdogan rival arrested', 19 March 2025 (<https://www.bbc.com/news/articles/c5yren8mxxp8o>).

⁴⁴ See <https://medyascope.tv/2025/04/28/53-arrested-in-second-investigation-targeting-istanbul-municipality/>.

⁴⁵ See Human Rights Watch, "Türkiye: Istanbul Mayor Detained," 19 May 2025 (<https://www.hrw.org/news/2025/03/19/turkiye-istanbul-mayor-detained>) and "Türkiye: Court Jails Istanbul Mayor," 24 March 2025 (<https://www.hrw.org/news/2025/03/24/turkiye-court-jails-istanbul-mayor>),

⁴⁶ In accordance with Article 13 of Law no. 2082 on Judges and Prosecutors.

other members of parliament.⁴⁷ A.G.'s rapid promotion is proof that, contrary to the government's claim, judicial officials who do not implement ECtHR and Constitutional Court judgments are not prevented from being promoted because of this failure; on the contrary, they can be assigned to highly important positions.

23. These proceedings show the executive's control over the judiciary through its capture of key judicial positions and institutions and their instrumentalisation in line with political interests. For example, the CJP launched a disciplinary investigation against a judge for ordering the release of Ayşe Barım, a talent agent and leading figure of the Turkish cinema industry, who was detained as part of the widened Gezi Park investigation.⁴⁸ In parallel, A.G. objected to her release and acted to secure her continued detention.⁴⁹ Ms. Barım has since been formally indicted on spurious charges of allegedly "aiding and abetting an attempt to overthrow the Government of the Republic of Turkey" in connection with the 2013 Gezi Park protests.⁵⁰ Prior to Ekrem İmamoğlu's arrest, A.G.'s office also initiated investigations and proceedings against the mayors of Beşiktaş and Esenyurt, municipalities of Istanbul, for alleged "corruption" and "membership of a terrorist organisation".⁵¹ Separate proceedings have also been brought against Mr. İmamoğlu for allegedly "targeting officials fighting terrorism" following his criticism of A.G.'s actions.⁵² The executive's influence on the proceedings targeting the Istanbul municipality is clearly evidenced in President Erdoğan's statements, such as: "the greatest revelations have not yet been made"; "[the opposition should] account for the corruption, theft, bribes taken, and irregularities committed, if they have the courage"; and "as President of the Republic [...] we make sure that every step is taken to prevent our citizens' rights, laws, and resources [...] from being usurped by 3-5 bandits".⁵³

⁴⁷ See Rule 9.2 submission of 26 January 2024 by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists (supra n 1), para. 35.

⁴⁸ See Bianet, 'Court removes İstanbul Bar board over statement on killed Kurdish journalists' (supra n 37); Bianet, 'Talent manager Ayşe Barım remains in custody after court overturns release decision', 18 February 2025 (<https://bianet.org/haber/talent-manager-ayse-barim-remains-in-custody-after-court-overturns-release-decision-304653>).

⁴⁹ Ibid.

⁵⁰ Haberler, 'Up to 30 years in prison requested for Ayşe Barım', 29 April 2025 (<https://en.haberler.com/up-to-30-years-in-prison-requested-for-ayse-barim-18568956/>).

⁵¹ Hürriyet Daily News, 'Beşiktaş mayor detained in tender corruption probe', 13 January 2025 (<https://www.hurriyetdailynews.com/besiktas-mayor-detained-in-tender-corruption-probe-204631>); Bianet, 'Who is Ahmet Özer, the arrested mayor of İstanbul's Esenyurt district?', 31 October 2024 (<https://bianet.org/haber/who-is-ahmet-ozar-the-arrested-mayor-of-istanbul-s-esenyurt-district-301277>).

⁵² See BirGün, 'Ekrem İmamoğlu appeared before the judge in Silivri over the "Akın Gürlek" case: Hearing adjourned to 16 June!', 11 April 2025 (<https://www.birgun.net/haber/ekrem-imamoglu-appeared-before-the-judge-in-silivri-over-the-akin-gurlek-case-hearing-adjourned-to-16-june-614478>).

⁵³ HalkTV, 'Erdoğan defends İmamoğlu operations: The big radishes in the bag will be revealed' [Turkish], 26 March 2025 (<https://halktv.com.tr/siyaset/son-dakika-erdogan-imamoglu-operasyonlarina-sahip-cikti-heybedeki-buyuk-turplar-924552h>).

24. In response to mass protests sparked by Mr. Imamoğlu's arrest, thousands of individuals were arrested in the span of just a few days.⁵⁴ Human rights organisations have credibly alleged gross human rights violations against protestors including ill-treatment that may amount to torture by policy, and denounced the arbitrary mass detentions and baseless prosecutions against many students and young people.⁵⁵ Those targeted and arrested include journalists covering the protests.⁵⁶ Following government bans on protests, a consumer boycott campaign led by the opposition has also been responded to with repression including arbitrary arrests, detention, and unwarranted criminal investigations for incitement to hatred and violence.⁵⁷
25. This pattern of large-scale and arbitrary arrests, detention and abusive criminal proceedings is strongly reminiscent of the crackdown following the Gezi Park events of 2013 and during the state of emergency between 2016 and 2018. The NGOs submit that it is necessary for these recent developments to be examined by the Committee as an integral part of the general measures required in this case, which is highly exceptional within the Convention system. The NGOs recall that the case was a rare instance in which the Court found a breach of Article 18 of the Convention in conjunction with Article 5, ruling that Mr. Kavala was detained for the ulterior purpose of silencing him as a human rights defender and to deter others from engaging in similar activities.⁵⁸ Article 18 of the Convention has been described as an *"early warning system for European States who are at risk of becoming an illiberal democracy or even of reverting to totalitarianism and the destruction of the rule of law"*.⁵⁹ The Court then even more exceptionally found a breach of Article 46 of the Convention, in the second ever infringement proceedings, holding that Türkiye had not complied in good faith with its obligation to execute this first judgment.⁶⁰
26. At the core of these judgments is a combination of abuse of criminal proceedings for political purposes and bad faith in the fulfillment of Convention obligations. The recent

⁵⁴ BBC News, 'Protests erupt in Turkey after Erdogan rival arrested', 19 March 2025 (<https://www.bbc.co.uk/news/articles/c5yren8mxxp8o>); BBC News, 'Thousands turn out for Turkey protests after more than 1,400 arrests', 26 March 2025, (<https://www.bbc.co.uk/news/articles/ckgz58rz3k8o>)

⁵⁵ See 'Turkey: End brutal crackdown on peaceful protest and human rights defenders', Joint statement by ARTICLE 19 and 12 other organisations, 4 April 2025 (<https://www.article19.org/resources/turkiye-end-brutal-crackdown-on-peaceful-protest/>), and Human Rights Watch, "Türkiye: Students, Journalists on Trial for Protest," 17 April, 2025 (<https://www.hrw.org/news/2025/04/17/turkiye-students-journalists-trial-protest>).

⁵⁶ Ibid. See also Orla Guerin, "Don't speak, don't film': Journalist arrests fuel fears for democracy after Turkey protests", BBC News, 4 April 2025 (<https://www.bbc.com/news/articles/c5ypxedzny4o>); Medyascope, 'Swedish journalist Joakim Medin arrested in Turkey amid protests', 31 March 2025 (<https://medyascope.tv/2025/03/31/swedish-journalist-joakim-medin-arrested-in-turkey-amid-protests/>).

⁵⁷ Bianet, 'Turkey's opposition launches nationwide no-shopping boycott', 2 April 2025 (<https://bianet.org/haber/turkeys-opposition-launches-nationwide-no-shopping-boycott-306067>); Hürriyet, '11 detained as part of probe over boycott calls', 3 April 2025 (<https://www.hurriyetdailynews.com/11-detained-as-part-of-probe-over-boycott-calls-207626>).

⁵⁸ *Kavala v. Turkey* (Application no. 28749/18, 10 December 2019), para. 232.

⁵⁹ Floris Tan, 'The Dawn of Article 18 ECHR: A Safeguard Against European Rule of Law Backsliding?', *Goettingen Journal of International Law* 9 (2018) 1, Special Ed. Holterhus, 109-141, p. 113.

⁶⁰ Proceedings under Article 46§4 in the case of *Kavala v. Türkiye* [GC] (Application no. 28749/18, 11 July 2022), para. 173.

developments laid out in the present submission highlight a deepening of these systemic patterns, suggesting that the finding of an Article 18 violation in this case has been unsuccessful as an “early warning system” designed to prevent further erosion of the rule of law. The NGOs submit, in this respect, that Türkiye has made no progress in addressing abuse of criminal proceedings and repression of human rights defenders and other government critics. On the contrary, it has regressed, effectively normalising these systematic Convention and rule of law violations. Unless the Committee ensures that general measures are taken to address these patterns and the Court’s alarming findings under Article 18 and in infringement proceedings under Article 46(4), these provisions of the Convention risk being stripped of their significance and effectiveness as mechanisms to address threats to the rule of law and democracy in Europe.

27. The NGOs note that the dismantling of effective domestic remedies against abusive criminal proceedings remains a central concern in relation to the general measures required in this case. As highlighted in their previous submission, there are serious and increasing doubts as to the Constitutional Court’s independence and effectiveness as the final arbiter in cases involving alleged violations of the Convention against actual or perceived dissenters or opposition figures in Türkiye.⁶¹ While the Government maintains that complaints about unlawful or excessively prolonged detention are examined as a matter of priority,⁶² in practice applications remain tactically pending based on the government’s interests and priorities.⁶³ Moreover, the continuing detention of MP Can Atalay despite two Constitutional Court decisions finding his detention unlawful provides striking evidence of the systematic denial of effective remedies for human rights violations against individuals perceived as a hindrance to the government’s authority and interests, and of the implosion of judicial independence and the rule of law in Türkiye.⁶⁴

IV. RECOMMENDATIONS⁶⁵

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

- i. Insist on the immediate and unconditional release of Osman Kavala, as required both by the ECtHR’s *Kavala* judgment and its finding of a violation of Article 46(1)

⁶¹ Rule 9.2 submission of 17 January 2025 by the Turkey Human Rights Litigation Support Project and Human Rights Watch (supra n 1), para. 23. See also HRW, ICJ, TLSP, ““Flouting the European Court of Human Rights and Bringing Domestic Courts to Heel” (supra n 9), pp. 9-12.

⁶² Action Plan of 28 March 2025 (supra n 4), para. 25.

⁶³ See Rule 9.2 submission of 17 January 2025 by the Turkey Human Rights Litigation Support Project and Human Rights Watch (supra n 1), para. 23; HRW, ICJ, TLSP, ““Flouting the European Court of Human Rights and Bringing Domestic Courts to Heel” (supra n 9), p. 11.

⁶⁴ See Rule 9.2 submission of 17 January 2025 by the Turkey Human Rights Litigation Support Project and Human Rights Watch (supra n 1), para. 23.

⁶⁵ See the NGO’s detailed recommendations in their previous submissions, which remain unimplemented: Rule 9.2 submission of 17 January 2025 by the Turkey Human Rights Litigation Support Project and Human Rights Watch (supra n 1), pp. 8-9; Rule 9.2 submission of 26 January 2024 by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists (supra n 1), pp. 23-26.

in July 2022, irrespective of a potential friendly settlement or a ruling by the Constitutional Court on Mr. Kavala's pending applications;

- ii. Stress that Mr. Kavala's conviction and aggravated life sentence, which rely on the same basis as already addressed in these judgments, are incompatible with Türkiye's obligations under the Convention and are part of ongoing serious violations of Mr. Kavala's Convention rights;
- iii. Strongly condemn Türkiye's sustained failure to implement these judgments and domestic measures undermining its obligations regarding Osman Kavala;
- iv. Indicate concrete steps the Committee intends to take or cooperate on with other Council of Europe bodies and Member States in response to Türkiye's sustained non-implementation and to secure the release of Osman Kavala.

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

Ensure the independence and impartiality of the judiciary by:

- i. Committing to reforming the CJP in line with the NGOs recommendations and Venice Commission's Opinion of December 2024, in particular to eradicate executive and legislative influence over this body;
- ii. Establishing safeguards against interference by the executive in the recruitment of members of the judiciary and preventing appointments based on political affiliations rather than on real and demonstrable objective merit;
- iii. Ensuring that other decisions affecting the career of judges and prosecutors are based on objective criteria and a transparent process to prevent decisions being subject to political interference or other undue influence;
- iv. Regularly submitting to the Committee concrete data and examples demonstrating that promotions are based on a consistent record of compliance with ECtHR and Constitutional Court judgments, and that non-compliance is systematically reflected in promotion decisions.

Cease violation of fundamental freedoms, including the silencing dissent and the systematic denial of Convention rights by:

- i. Ending the escalating abuse of arbitrary detention and criminal proceedings, including the resurgence and widening of the Gezi Park investigation, the retaliation against the human rights monitoring activities of the Istanbul Bar Association, and the crackdown on recent peaceful protests in response to the arrest and detention of Istanbul mayor Ekrem İmamoğlu, which are all designed to stifle and retaliate against the legitimate exercise of Convention rights;

- ii. Ensuring that judicial authorities are empowered to apply in good faith the ECtHR judgments and standards on the legitimate exercise of Convention rights and permissible restrictions without fear of repercussion for so doing, and are protected from any intimidation, threats and reprisals for carrying out their professional functions
- iii. Ensuring the independence of the Constitutional Court and its effectiveness in providing a timely and meaningful remedy against detention and criminal proceedings aimed at silencing or punishing the legitimate exercise of Convention rights and the defence of human rights;
- iv. Restoring an enabling environment for the defence and promotion of human rights, including by refraining from and preventing attacks, threats, intimidation, and smear campaigns against human rights defenders and ensuring that they benefit from heightened protection in carrying out their activities.

THE GOVERNMENT OF TÜRKİYE'S RESPONSE TO THE RULE 9.2 SUBMISSIONS

Kavala (28749/18)

1. The Government of Türkiye would like to make the following explanations in response to the submissions of the Türkiye Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists dated 26 May 2025.
2. At the outset, the Government would like to reiterate the information provided in their previous submissions in particular the Action Plan dated 28 March 2025 and additional information on individual measures dated 3 June 2025. The Government also find it useful to provide the following information.
3. With the approval decision of the 3rd Criminal Chamber of the Court of Cassation dated 28 September 2023, the conviction of the applicant became final and he is currently in prison as a convict.
4. At this point, the authorities would like to reiterate that the individual applications lodged with the Constitutional Court, first on 9 June 2022 and second on 24 October 2023, are currently pending before this court.
5. Furthermore, the application, on 18 January 2024, lodged by the applicant with the ECtHR is also pending before this court.
6. The Government is always open and ready for co-operation with the bodies of the Council of Europe. In this respect, two high-level technical meetings were held with the representatives of the Secretariat, the first on 15 February 2024, the second on 24 October 2024 and the third on 23 May 2025. There were visits to Türkiye by the PACE co-rapporteurs on 11-14 June 2024 and by the Commissioner for Human Rights on 4-8 November 2024. Detailed information was submitted in our Action Plan and Additional Information.
7. As it is seen, the Government always maintains a constructive co-operation with the relevant bodies of the Council of Europe within the context of the supervision of the present case.
8. Lastly, the authorities find it unnecessary to comment on the other allegations in the submissions as they are irrelevant with the scope of the current execution process. On this basis, the authorities are of the opinion that these speculations should not be taken into consideration.

9. The Government of Türkiye will maintain submitting information on the individual and general measures taken or envisaged to be taken in due time. In this respect, the Committee of Ministers will be kept informed on further developments.