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Meeting: 1569th meeting (September 2026) (DH)

Communication from the applicant (15/07/2026) in the case of Tosun and Others v. Türkiye (in respect of the application Karanfil v. Türkiye (3891/17)) (Application No. 60220/16) (Bilgen group).

Information made available under Rule 9.1 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 : 1569^e réunion (septembre 2026) (DH)

Communication du requérant (07/2026) relative à l'affaire Tosun et autres c. Türkiye (concerne la requête n Karanfil v. Türkiye (3891/17)) (Requête n° 60220/16) (groupe Bilgen) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

ADDITIONAL COMMUNICATION UNDER RULE 9.1 OF THE RULES OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

DGI

15 JUIL. 2026

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Case of: *Tosun and Others v. Türkiye* (Application No. 60220/16)

Applicant: Vecdi Karanfil

ECtHR Application No: 3891/17

Date: 13 July 2026

To the Distinguished Members of the Committee of Ministers,

I am one of the applicants appended to the judgment of the European Court of Human Rights dated 11 February 2025 in the case of *Tosun and Others v. Türkiye*. By the aforementioned judgment, the Court held that the termination of office of the members of the Council of State and the Court of Cassation directly by statutory operation, without being subjected to any form of judicial review, violated the right of access to a court guaranteed under Article 6 § 1 of the European Convention on Human Rights.

Following the finalisation of the judgment, I submitted my initial individual communication to your Committee on 28 July 2025, pursuant to Rule 9.1 of the Rules of the Committee of Ministers. In the said communication, I elucidated in detail that the violation was not merely a historical, instantaneous act; rather, the unlawful termination of my membership in the Council of State formed the structural basis for all subsequent administrative and criminal proceedings brought against me. Consequently, the effects of the violation remain ongoing, and the failure to fully execute the judgment serves to progressively deepen my victimhood.

Despite the lapse of approximately one and a half years, no concrete progress has been achieved by the Government toward the full and effective execution of the judgment. No individual measures have been adopted to remedy the consequences of the violation affecting my specific situation. More critically, the systemic conduct of the domestic authorities demonstrates a manifest absence of *bona fide* intent to execute the judgment.

Pursuant to Article 46 of the European Convention on Human Rights, the obligation of High Contracting Parties is not limited merely to the payment of just satisfaction awarded by the Court. States are equally bound to erase the consequences of the violation to the maximum extent possible, to restore the applicant to the legal position they would have occupied had the violation not occurred (*restitutio in integrum*). This obligation is the natural corollary of the principle of good faith execution, which underpins the Convention system.

In the present case, however, no effective mechanism has been set in motion to remedy the consequences of the violation since the judgment became final. On the contrary, the domestic legal initiatives I initiated to secure the implementation of the judgment have been met with systematic institutional resistance from domestic authorities and judicial organs. Accordingly, the issue has transcended a mere failure to execute a historical judgment; it has now escalated

into the active neutralisation of the judgment within the domestic legal order and the *de facto* obstruction of its execution.

Therefore, this additional communication does not merely recapitulate the matters raised in my initial submission. Its precise objective is to bring to the attention of the Committee of Ministers—in light of the developments subsequent to my initial communication—the institutional resistance of the domestic authorities against the implementation of the ECtHR judgment and the tangible obstruction this resistance exerts upon the execution process.

I. The Conduct of Domestic Authorities Highlights a Systemic Institutional Resistance to the Execution of the Judgment

Following the finalisation of the judgment, as the domestic authorities took no spontaneous initiative to extinguish the consequences of the violation, I was compelled to exhaust all available and effective domestic remedies myself in order to secure the restoration of my prior legal status (*restitutio in integrum*).

The overarching reality emerging across all judicial venues to which I applied demonstrates a concerted and systematic institutional resistance to the application of the ECtHR judgment.

A. Regarding the Criminal Proceedings

In my application for the reopening of criminal proceedings (*yargılamanın yenilenmesi*) lodged before the Court of Cassation, my foundational legal ground was the ECtHR judgment in *Tosun and Others*.

In the assessments underpinning my criminal conviction, the termination of my membership in the Council of State via Law No. 6723 served as one of the primary adverse factual premises deployed against me during the trial.

Consequently, the ECtHR's determination that this underlying measure was unlawful has given rise to a new and binding legal reality that necessitates a comprehensive re-evaluation of the criminal conviction itself.

Notwithstanding this, the Court of Cassation failed to assess the impact of the ECtHR judgment on the criminal proceedings and summarily dismissed my request for a reopening without conducting any substantive review capable of redressing the consequences of the violation.

This disposition clearly demonstrates that the ECtHR judgment has been rendered ineffective, not only with respect to the violation found but also regarding the eradication of its lingering consequences.

B. The Constitutional Court Proceedings

Following the dismissal by the Court of Cassation, I lodged an individual application before the Constitutional Court.

The gravamen of my application rested squarely on the failure of domestic authorities to execute a final and binding judgment of the ECtHR.

Nevertheless, rather than evaluating the merits of the application, the Constitutional Court disposed of the matter through formalistic and procedural re-characterisations, completely omitting any substantive analysis regarding the binding nature of the ECtHR judgment or its requisite effects within the domestic legal order.

As a result, even the highest constitutional review authority in the domestic jurisdiction actively evaded conducting an essential inquiry into the execution of the ECtHR judgment.

C. The Pending Reopening Proceedings Before the Council of State

My application for the reopening of proceedings currently pending before the Council of State directly seeks the proper execution of the ECtHR judgment.

The underlying legal premise is unambiguous: the termination of my membership in the Council of State by virtue of Law No. 6723 is the operative and foundational act upon which all subsequently engineered administrative measures rest.

In light of this legal reality, it is conceptually untenable for subsequent measures to maintain their legal validity once their foundational act has been vitiated.

As a direct consequence of the statutory termination of my membership in the Council of State, I was stripped of my high-court judicial status against my will and placed under the jurisdiction of the Council of Judges and Prosecutors (HSK)—a body which, under normal constitutional parameters, possessed absolutely no authority over my tenure.

Subsequently, my judicial office was terminated by an administrative decision of the HSK.

Therefore, the initial act—which the ECtHR held to be unlawful—constitutes the legal bedrock of all subsequent measures. Acknowledging that the initial act is legally tainted inherently mandates a re-evaluation of all derivative measures dependent upon it.

Despite these established facts, the official defense submitted by the respondent administration reveals a striking stance regarding the execution of the ECtHR judgment.

In its formal defense dated **03 July 2026**, the respondent administration (HSK) asserted the following:

"...even if the plaintiff's membership in the Council of State had not been terminated pursuant to the relevant Law, his office could still have been terminated by the Bureau of the Council of State pursuant to Decree-Law No. 667..."

This line of defense is not a mere procedural argument confined to an isolated lawsuit.

On the contrary, it explicitly demonstrates that rather than moving to eradicate the consequences of the violation, the Government seeks to deny the necessity of any remedy by advancing a hypothetical and alternative scenario wherein the same adverse outcome would have allegedly occurred.

In other words, the respondent HSK does not attempt to purge the consequences of the act found unlawful by the ECtHR; instead, it attempts to legitimize that illegality through counterfactual and speculative premises.

Such an approach is entirely incompatible with the binding character of ECtHR judgments and directly contravenes the obligation of good faith execution enshrined in Article 46 of the Convention.

The defense in question stands as contemporary, documentary proof that domestic authorities lack the institutional will to implement the ECtHR judgment and are actively seeking to render the execution process nugatory.

II. Evaluation of These Developments under Article 46 of the ECHR

When the aforementioned developments are evaluated holistically, the fundamental issue presented in this case is no longer confined to a mere delay in remedying the individual violation.

The core grievance lies in the fact that a final and binding judgment of the European Court of Human Rights is being actively neutralised by domestic authorities, and the necessary institutional will to initiate a genuine execution process remains completely absent.

Despite the passage of approximately one and a half years, no individual measures have been adopted to rectify the consequences of the violation; my legal status has not been restored; and the legal effects of the measures rooted in the initial violation remain undisturbed. Concurrently, domestic judicial and administrative authorities systematically evade conducting any meaningful legal analysis on the binding implications of the ECtHR judgment.

The defining characteristic of this process is not an explicit, overt rejection of the ECtHR judgment by domestic authorities, but rather a sophisticated neutralisation of its effects through diverse procedural pretexts or speculative assumptions, thereby bypassing the mandatory legal debate required for its implementation.

This state of affairs directly results in the non-execution of the judgment.

The formal defense submitted by the respondent administration to the Council of State file serves as the most glaring illustration of this systemic posture. Instead of curing the defects of an act found unlawful by the ECtHR, the administration attempts to render the remedy superfluous by arguing that the same result could have been achieved via alternative pathways.

Yet, under Article 46 of the European Convention on Human Rights, the obligation of High Contracting Parties is not to speculate on hypothetical contingencies. The obligation is to erase the consequences of the specific act found unlawful by the Court and to restore the applicant, as far as possible, to the situation they would have been in had the violation not occurred (*restitutio in integrum*).

Accordingly, counterfactual defenses put forward by domestic authorities cannot be accepted as legally valid substitutes for execution.

To the contrary, these arguments constitute clear, written evidence of the institutional mindset blocking the rectification of the violation's consequences.

As of today, my legal situation remains virtually identical to the day the ECtHR judgment was delivered.

The consequences flowing from the unlawful termination of my membership in the Council of State continue to operate with full force, and the subsequent measures predicated on that unlawful act persist within the domestic legal order.

Consequently, the violation has not remained an isolated historical event; due to the persistent failure to execute the judgment, it has assumed the character of a continuing violation.

For these reasons, it is of paramount importance that the supervisory mandate of the Committee of Ministers extends beyond a formalistic verification of whether just satisfaction has been paid, and evaluates whether the core substance of the judgment has genuinely been given effect within the domestic jurisdiction.

III. Conclusion and Requests

In light of the reasons submitted above, I respectfully request the Committee of Ministers, within the framework of its execution supervision conducted under Article 46 of the Convention, to:

- **Request an explicit explanation from the Government of Türkiye** as to why no concrete progress has been achieved toward the execution of the *Tosun and Others* judgment despite the substantial period that has elapsed;
- **Urge the Government to submit a detailed action plan** outlining the specific individual measures to be adopted to erase the consequences of the violation, a definitive timeline for their implementation, and a concrete framework for the restoration of the applicant's prior legal status;
- **Take formal note, within the context of the execution process, of the obstructive practices** deployed by domestic courts and administrative authorities that impede the implementation of the ECtHR judgment, with specific emphasis on their attempts to neutralise the judgment through speculative and counterfactual reasoning;
- **Maintain the case under the close, enhanced supervision of the Committee of Ministers** until a genuine and complete *restitutio in integrum* is fully secured for the applicant;
- **Call upon the respondent State to provide effective individual remedies** for the applicant, specifically ensuring a genuine and effective retrial process;
- **Urge the respondent State to establish or provide an effective compensatory remedy** capable of fully redressing the severe material and moral damages suffered by the applicant, in the event that a genuine and compliant *restitutio in integrum* is delayed or obstructed by domestic judicial resistance;
- **Place the case of *Tosun and Others*** on the agenda of one of the Committee of Ministers' upcoming Human Rights (DH) meetings for a comprehensive evaluation.

The binding force of ECtHR judgments and the institutional efficacy of the Convention mechanism rely not merely on the delivery of violation judgments, but on their robust and good faith implementation. Allowing a final violation judgment to remain ineffective over a

protracted period does not merely perpetuate individual victimhood; it fundamentally erodes public confidence in the collective enforcement mechanism of the Convention system.

In the firm belief that the Committee will exercise its supervisory powers to closely monitor the process and ensure the effective execution of the *Tosun and Others* judgment, I respectfully submit this additional communication.

Vecdi Karanfil

Former Member of the Council of State

Applicant – Tosun and Others v. Türkiye (Application No. 3891/17)