

CommHR(2026)25

Grand Chamber hearing in the case of *Kavala v Türkiye* (no.2) European Court of Human Rights

Oral intervention by Michael O'Flaherty
Council of Europe Commissioner for Human Rights

Strasbourg, 25 March 2026

Thank you, Mr President, Distinguished members of the Court,

This case, of course, concerns the rights of Mr Kavala as an individual. At the same time, it points to the ongoing structural challenges facing human rights defenders in Türkiye. I address the Court to share insight from my own work in a manner of which I hope will further inform you about these issues.

My intervention also touches on the enforcement of judgments of this Court. The present case concerns the continued detention of Mr. Kavala and the criminal proceedings which resulted in his conviction to aggravated life imprisonment after this Court issued two judgments mandating his release. The non-execution of those judgments is at the origin of the present case.

Since taking up my mandate, I have engaged with the Turkish authorities and raised with them, on more than one occasion, the non-implementation of the judgments. In November 2024, during my first visit to Türkiye, I visited Mr Kavala in prison. I was impressed by his integrity, his resilience, and his commitment to the cause of human rights. In December 2025, I again visited the country; and during that visit, I engaged with the authorities, with legal experts and with civil society organisations.

In *Kavala v. Turkey*, this Court examined the proceedings against Mr Kavala in light of his activities as a human rights defender. You established beyond reasonable doubt that the measures complained of pursued the ulterior purpose of reducing Mr Kavala to silence. Further, in view of the charges that were brought against him, you considered that the contested measures were likely to have a dissuasive effect on the work of human rights defenders.

The non-execution of the general measures required in the Kavala case is indeed indicative of the situation as I observed as recently as 2025.

During my visit, my interlocutors reported a continuation of pressure on civil society, human rights defenders, lawyers, journalists, and opposition politicians. They drew my attention to disproportionate restrictions to freedom of expression, peaceful assembly and association; the continued misuse of criminal and anti-terrorism provisions; and issues with regard to the independence and the impartiality of the judiciary.

I am concerned that **criminal law and anti-terrorism provisions** continue to be broadly interpreted and applied to actions that should be considered as legitimate democratic activity. This includes, for example non-violent acts, critical expression, association, human rights advocacy. Furthermore, reports indicate that domestic courts tend to initiate criminal proceedings without sufficient or adequate reasoning and without a clear link between any alleged conduct and violence, incitement to violence, or other elements required to justify criminal sanctions.

I have also received reports of repeated restrictions on demonstrations and assemblies, disproportionately impacting certain groups, with police using unnecessary force to disperse peaceful protest. I have been informed that journalists, opposition politicians, lawyers, and ordinary citizens have faced criminal investigation simply for voicing dissent.

In addition, bar associations and legal professionals face pressure and criminal prosecution for their work. Associations working on human rights suffer from legal, administrative, and judicial constraints, including arbitrary audits and criminal cases in which advocacy is treated as evidence of wrongdoing.

These reports indicate persistent problems regarding the rights to freedom of expression, association, peaceful assembly, and they echo problems identified in judgements of this Court that are still pending execution before the Committee of Ministers, indeed for periods ranging from nine to twenty years.

The failure of the authorities to resolve these issues lies behind repeated human rights violations today.

Allow me to turn to the **administration of justice and the protection of human rights within the justice system**. This Court assessed aspects of the functioning of the justice system in the *Kavala v. Turkey* case. During my recent visit, I was informed about continuing issues concerning the independence and impartiality of the judiciary, the right to a fair trial, and regarding the operation of the Turkish Constitutional Court.

Concerning the **independence and impartiality of the judiciary and judges**, I note that problems have been exacerbated by several constitutional and legislative amendments that alter the composition and selection procedure of the Council of Judges and Prosecutors (the main self-governing body of the judiciary). These run counter to recommendations of international human rights and expert bodies, including two Opinions of the Venice Commission; and this Court has referred to such matters in the cases of *Selahattin Demirtaş* and *Yüksekdağ Şenoğlu*.

Turning to issues relating to the right to a **fair trial**, multiple practices raise concern related to legal certainty and foreseeability. These include overly long indictments, shortcomings regarding legal analysis and the quality of evidence, the use of secret witnesses, and the initiation of multiple, overlapping criminal cases based on identical or similar facts and legal grounds. Equally, legal process is threatened by the non-execution of release orders with new and simultaneously issued arrest and detention orders. I have also been informed that the principle of equality of arms is undermined in as much as lawyers are restricted in the exercise of their professional activities.

Finally, I turn to **considerations regarding the Turkish Constitutional Court**. I note that Mr Kavala has two applications pending before the Constitutional Court, one since 2022 and another since 2023. These respectively concern his detention and conviction in the Gezi Park case, and the upholding by the Court of Cassation of his conviction.

The effectiveness of the individual application mechanism before the Turkish Constitutional Court constitutes a central judicial safeguard.

In this regard, I would wish to raise two matters.

First, issues have been brought to my attention by my interlocutors about the Constitutional Court's slowness in reviewing individual complaints. Despite the Committee of Ministers' calls to strengthen the Constitutional Court's priority criteria, no measures have been taken or are envisaged. As a result, cases of deprivation of liberty are not addressed with the speediness required under criteria of this Court.

Second, there have been several recent instances where Constitutional Court judgments have not been implemented by the lower courts. I draw the Court's attention in particular to the cases of Can Atalay and Tayfun Kahraman, co-defendants of the applicant in the Gezi Park case.

In conclusion, President, Honourable Members,

I believe that the contemporary situation for human rights defenders and civil society in Türkiye, together with issues of the mal-administration of justice, are highly relevant in the present case. I encourage the Court to give them due consideration.

I thank you.