



**WHY ARE THE ECtHR JUDGMENTS IN THE CASES OF
OSMAN KAVALA, SELAHATTİN DEMİRTAŞ AND YÜKSEL
YALÇINKAYA
NOT IMPLEMENTED?**

Security Studies and Rule of Law Association (SRL Swiss)

September 2026

Introduction

Article 46 of the European Convention on Human Rights (the Convention) obliges a respondent State to abide by the final judgment of the European Court of Human Rights (the Court). Execution is not confined to payment of the just satisfaction awarded: it also entails consideration of individual measures to remedy the consequences of the violation for the applicant and general measures to prevent its recurrence.[1] In the Kavala case, the Court found in separate infringement proceedings in 2022 that its first judgment had not been implemented.[2] Although the Court indicated Mr Demirtaş’s release, the Committee of Ministers continues to supervise execution.[3] In Yalçınkaya, the issue extends beyond redress for one applicant to the correction of a systemic approach to comparable convictions.[4]

This report does not treat the number of closed execution cases, on its own, as proof of the claim that “most judgments are implemented”. The Council of Europe Commissioner for Human Rights has expressly distinguished Türkiye’s high overall execution rate from the low level of implementation of leading judgments concerning structural problems.[5]

1 Scope and statistical method

In the Court’s statistics, an “application”, a “judgment”, a “judgment finding at least one violation” and a “violation by Article” are distinct units. A single judgment may concern several applications and find violations of several provisions. The following calculation aggregates the “Judgments finding at least one violation” column in the Court’s annual “Violations by Article and by State” tables for 2016–2025. Of 943 judgments concerning Türkiye, 851 found at least one violation. Türkiye ranks third on this measure, after the Russian Federation and Ukraine.[6][14]

Year	Judgments concerning Türkiye	Judgments finding at least one violation
2016	88	77
2017	116	99
2018	146	140
2019	113	96
2020	97	85
2021	78	76

2022	80	73
2023	78	72
2024	73	67
2025	74	66
2016–2025 total	943	851

Comparative ranking using the same ten-year measure:

Rank	State	Judgments finding at least one violation
1	Russian Federation	2,376
2	Ukraine	1,200
3	Türkiye	851
4	Romania	592
5	Hungary	328
6	Italy	295
7	Moldova	288
8	Azerbaijan	280
9	Bulgaria	260
10	Greece	256

Source and scope: the Court’s ten official annual tables.[14] The designations Turkey/Türkiye and the former and current names of North Macedonia have been harmonised. Russia remains in the 2016–2025 series because the tables include judgments concerning it, notwithstanding its exclusion from the Council of Europe in 2022.[7] The figures are not adjusted for population or application volume. They are summed by judgment year in the annual PDF tables; findings under multiple Articles in one case count as one judgment in this measure.

2 Binding force and status in Turkish law

Article 46 § 1 of the Convention records the States Parties’ undertaking to abide by final judgments in cases to which they are parties; Article 46 § 2 entrusts supervision of execution to the Committee of Ministers.[1] Under the final paragraph of Article 90 of the Turkish Constitution, where statutes and international agreements concerning fundamental rights and freedoms contain differing provisions on the same matter, the treaty provision prevails. Articles 19

and 36 of the Constitution protect, respectively, liberty and security of the person and the right to a fair trial.[8]

Former President of the Constitutional Court Zühtü Arslan has observed that Article 90 leaves certain questions about the hierarchy of norms open, while its final paragraph gives priority to human-rights treaties in the event of a conflict with statute.[9] Accordingly, the international obligation to comply with a final ECtHR judgment under Article 46 and the interpretive duties of domestic courts under Article 90 should be stated separately, rather than compressed into the overbroad assertion that an ECtHR judgment “stands above the Constitution”. The Court’s Guide on Article 46 explains that appropriate individual measures depend on the nature of the violation and that payment of compensation will not invariably end its continuing consequences.[1]

3 Categories of violations and the three judgments

The three judgments concern core guarantees in criminal proceedings. The annual Article-by-Article series for Türkiye records, for 2016–2025, 224 findings in the principal fair-trial column, 214 under the right to liberty and security, and six under the principle of no punishment without law.[15] These are not mutually exclusive groups of cases: one judgment may contain findings under more than one of Articles 5, 6 and 7. The Article 6 charts also present separate categories for length of proceedings and non-enforcement of domestic judgments; the figure of 224 here is the aggregate of the main “Right to a Fair Trial” column.

Year	Article 6: main fair-trial column	Article 5: liberty and security	Article 7: legality
2016	11	22	0
2017	46	19	0
2018	41	29	0
2019	13	16	1
2020	21	16	0
2021	22	29	0
2022	16	27	1
2023	17	16	1
2024	13	19	0
2025	24	21	3

Total	224	214	6
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The Article 5 column is not synonymous with “arbitrary detention”: it covers findings relating to arrest, detention, reasonable suspicion, duration and judicial review under the right to liberty and security. Nor is the Article 6 column a count of findings solely on judicial independence; it includes the independent and impartial tribunal guarantee together with defence rights, access to evidence and other components of a fair trial. The institutional issue of judicial independence is examined separately below.[15][16]

Osman Kavala

In *Kavala v. Türkiye* (no. 28749/18), judgment of 10 December 2019, the Court found a violation of Article 5 § 1 because there had been no reasonable suspicion justifying detention, and a violation of Article 18 taken together with Article 5 because the deprivation of liberty pursued the ulterior purpose of silencing the applicant. It indicated the measure necessary to secure his release.[10] On 11 July 2022, in infringement proceedings under Article 46 § 4, the Grand Chamber held that Türkiye had failed to fulfil its obligation to abide by the first judgment.[2]

Subsequent developments: Mr Kavala was not released. He was later sentenced to aggravated life imprisonment and remained in prison as at 29 September 2026. In its judgment of 25 August 2026 in *Kavala v. Türkiye* (no. 2, no. 2170/24), the Grand Chamber examined his subsequent detention and conviction. It found violations of Articles 3, 5 § 1, 6 § 1, 10 and 11, and Article 18 taken in conjunction with the relevant substantive rights. The Court required his release at the earliest possible date and the elimination of the consequences of his conviction, which it regarded as null and void under the Convention.[11] Those individual measures had not been carried out as at the date of this report.

Selahattin Demirtaş

The Grand Chamber’s judgment of 22 December 2020 in *Selahattin Demirtaş v. Türkiye* (no. 2, no. 14305/17) examined violations relating to liberty and security, freedom of expression, the right to free elections and Article 18. The Court considered the applicant’s immediate release necessary to put an end to the violations it had found.[12]

Subsequent developments: Mr Demirtaş remained in prison as at 29 September 2026. While Türkiye has relied on later investigative and conviction proceedings, the Committee of Ministers has continued to examine whether those steps provide the individual redress required by the Court’s judgment. The release indicated by the Court has not occurred.[3][13]

Yüksel Yalçinkaya

In its Grand Chamber judgment of 26 September 2023 in Yüksel Yalçinkaya v. Türkiye (no. 15669/20), the Court found violations of Article 7 and Article 6 § 1 where use of ByLock had been treated as decisive for conviction without an individualised determination of the elements of the offence and without an effective opportunity for the defence to challenge the evidence. It also found a violation of Article 11 in relation to trade-union and association membership.[4] The systemic dimension of the judgment requires the automatic reasoning used in comparable convictions to be addressed.

Subsequent developments: the Kayseri 2nd Assize Court allowed the request for reopening but, on 12 September 2024, again entered the same conviction.[17] The mere fact that proceedings were reopened therefore does not establish that the violation was remedied. The Committee of Ministers continues to address the individual assessment of the material and mental elements of the offence and general measures for other cases affected by the same problem.[13]

4 The gap between formal steps and effective execution

Execution must be monitored at three distinct levels: (i) payment of just satisfaction and costs; (ii) individual measures for the applicant, such as ending continuing detention or providing an effective retrial; and (iii) general measures to prevent recurrence. Completion of the first does not establish completion of the other two.[1] Any reliance on the number of “closed” cases must identify the denominator, closure dates and, in particular, how long leading or structural cases remain pending. The Commissioner’s distinction between a high overall rate and weak implementation of leading judgments supports this approach.[5]

According to the Ministry of Justice chart dated 10 February 2026, 4,117 of 4,558 execution cases concerning Türkiye had been closed, an overall rate of 90.32%, compared with 79.71% for Council of Europe States as a whole.[22] This figure should be reported accurately. It does not, however, measure compliance in leading cases requiring release, such as Kavala and Demirtaş, or affecting numerous comparable convictions, such as Yalçinkaya. The Commissioner’s observation about a high overall rate and low implementation of leading judgments addresses precisely these different denominators.[5] The Ministry’s percentage and the execution gap in these three cases can therefore coexist.

In Kavala, the 2022 Article 46 § 4 judgment is a judicial finding that formal procedural steps had not produced the substantive result required by the original judgment.[2] In Demirtaş, whether later charges have genuinely remedied the

consequences of the violations found by the Court remains under the Committee of Ministers' supervision.[3] In Yalçinkaya, action in the applicant's own case alone cannot resolve the systemic issue for people convicted on the same interpretation.[4][13] These facts identify recurring features of the execution gap: domestic judicial practice, continued detention on different charges and delay in general measures.

The distinction also appears where compensation is paid but the decisive consequence for a person's liberty or conviction remains unchanged. In prison-related cases, the authorities may contact an applicant to arrange payment while the same ECtHR judgment, although submitted to the criminal court, produces no effective result in relation to detention. According to information obtained by SRL Swiss from events arising during prison proceedings, this disconnection between payment and liberty-related redress has arisen in more than one case. Separate supervision of payment, individual measures and general measures by the Committee of Ministers makes this implementation problem visible.[1][13]

5 Judicial independence and political statements in the execution of judgments

In its 2024 concluding observations on Türkiye, the United Nations Human Rights Committee expressed concern about the executive's increased influence over the judiciary following the 2017 constitutional amendments. It identified shortcomings in the independence of the Council of Judges and Prosecutors (CJP) from the executive and in safeguards governing the selection, appointment, promotion and discipline of judges, and called for protection of judges and prosecutors from undue pressure.[16] The Venice Commission's 2024 opinion on the CJP examined the absence of election of judicial members by their peers and executive influence over the Council's composition.[18] In 2025, the Parliamentary Assembly of the Council of Europe called both for implementation of the Kavala and Demirtaş judgments and for reform to safeguard judicial independence.[19] These are documented features of the institutional setting in which the judgments must be executed.

The chronology of political statements is also relevant. On 23 December 2020, one day after the Demirtaş Grand Chamber judgment, President Erdoğan described it as "entirely political" and criticised the call for release.[20] The Yalçinkaya Grand Chamber judgment was delivered on 26 September 2023. In his address opening the Grand National Assembly on 1 October 2023, the President referred to recent ECtHR judgments and said, in substance, that no one would benefit from that

judgment.[21] The five-day interval and the words used are recorded in the official parliamentary transcript. The same conviction was entered again against Mr Yalçinkaya on 12 September 2024.[17]

The CJP's powers over discipline and appointment are not merely an abstract concern in this context. As recorded by the Court in Kavala (no. 2), the CJP began a preliminary inquiry on 19 February 2020, followed by disciplinary proceedings, against the three judges who had acquitted Mr Kavala and ordered his release the previous day. The Court considered that an investigation opened following the acquittal was capable of exerting dissuasive pressure on those judges and undermining judicial independence in the subsequent proceedings.[11] A Parliamentary Assembly rapporteur also recorded that a judge who had voted against Mr Kavala's continued detention had been reassigned to another court; the authorities' account of that assignment appears in the same report.[23]

This example must be considered against the wider setting of dismissals after 2016. In its 2024 concluding observations, the UN Human Rights Committee expressed concern that thousands of judges and prosecutors had been summarily dismissed, allegedly for links to the Gülen movement, without due-process safeguards.[16] A Parliamentary Assembly rapporteur likewise noted the effect on the judicial system of the dismissal of more than 4,000 judges and prosecutors.[23] These mass measures do not, without further evidence, establish a direct causal link to any individual judge's decision in a particular case; they do form part of the institutional setting in which disciplinary and reassignment powers are exercised.

The sequence of a political statement followed by a judicial outcome does not, by itself, prove a direct instruction to a particular judge. Yet the pressure mechanism cannot be disregarded in a case where the ECtHR itself examined disciplinary proceedings against judges who had delivered an acquittal. The Human Rights Committee's concerns about appointment, promotion and disciplinary safeguards, together with the Venice Commission's findings on the CJP's structure, explain the institutional conditions facing judges who decide these cases.[11][16][18]

6 Conclusion and call to the Council of Europe

The ten-year series records 851 judgments finding at least one violation concerning Türkiye, including substantial numbers in the areas of fair-trial guarantees and liberty and security. The fate of the three leading cases shows the limits of an aggregate closure rate: the release required by the Court has not occurred in Kavala or Demirtaş, and the reopened proceedings in Yalçinkaya

resulted in the same conviction. In Kavala, the Court found non-compliance with Article 46 in 2022 and, in a new judgment in 2026, expressly required release and the elimination of the consequences of the conviction.[2][4][11][12][14][15][17]

SRL Swiss calls on the Committee of Ministers to supervise execution in these cases by reference to actual outcomes. In Kavala and Demirtaş it should require a clear timetable and evidence of the individual measures affecting the applicants' liberty. In Yalçinkaya it should require an account of how the new judgment addresses the Court's reasoning under Articles 6, 7 and 11, together with measurable changes in comparable cases. A payment record, a new case number or an order reopening proceedings must not, by itself, be presented as completed execution.[1][2][4][13]

The Turkish authorities should specify and implement the individual and general measures required by the judgments and put in place safeguards against the use of the CJP's appointment and disciplinary powers to exert pressure over judicial decisions. The Council of Europe should ensure that leading cases do not disappear behind the aggregate closure rate. It should subject them to regular public supervision against clear criteria and use the Convention's execution mechanisms where necessary. The binding force of an ECtHR judgment is realised when the continuing consequences of the violation are remedied, not when the judgment is accepted on paper alone.[1][2][5][11][16][18]

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