



AEAJ



THE EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

CASE OF KAVALA v. TÜRKİYE (No. 2)

(Application no. 2170/24)

WRITTEN SUBMISSION

ON BEHALF OF THE THIRD-PARTY INTERVENERS

AEAJ (The Association of European Administrative Judges)

EAJ (European Association of Judges)

Judges for Judges (Rechters voor Rechters)

MEDEL (Magistrats européens pour la démocratie et les libertés)

I. INTRODUCTION AND SCOPE OF THE INTERVENTION

1. This written submission is made pursuant to Rule 44 § 3 of the Rules of Court. It is intended to assist the Court in its examination of whether the criminal proceedings against the applicant satisfied the requirements of Article 6 § 1 of the Convention, in particular the right to be tried by an independent and impartial tribunal established by law.
2. . The intervention is confined exclusively to structural and systemic factors affecting judicial independence and impartiality in Türkiye, which are directly relevant to the Court's objective assessment under Article 6 § 1.
3. The Court has consistently held that the independence of a tribunal must be assessed not only with regard to the personal conduct of individual judges, but also by reference to the institutional framework governing judicial appointments, tenure, discipline, and the broader constitutional environment in which courts operate.¹
4. The present case arises against a background of profound structural changes to the governance of the judiciary in Türkiye, coupled with the systematic non-execution of binding judgments of this Court, most notably in the applicant's own case. These developments go to

¹ Findlay v. the United Kingdom, no. 22107/93, (25 February 1997) § 73, Reports 1997-I; Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, (1 December 2020) §§ 231–234.

the heart of whether tribunals adjudicating politically sensitive cases can be regarded as independent and impartial in Convention terms.²

5. Following the failed coup attempt of July 2016 more than 4,500 judges and prosecutors were dismissed and approximately 2,700 were detained through mass, non-individualized decisions lacking factual evidence. Arrests, dismissals, and prosecutions were often based on vague allegations and copy-paste rulings, creating a severe chilling effect within the judiciary.³ International and regional bodies have repeatedly raised serious concerns regarding these developments. The Venice Commission concluded that dismissals of high-level judges, including members of the Constitutional Court, were carried out without any evidentiary basis and undermined the separation of powers.⁴ The European Network of Councils for the Judiciary suspended the observer status of Türkiye's HSK, finding that it no longer functioned as an independent judicial council.⁵ The Council of Europe Commissioner for Human Rights emphasized that mass dismissals, arbitrary transfers, and politically motivated prosecutions have rendered judicial independence illusory, noting that it would be unreasonable to expect courts to act independently under such conditions.⁶ The European Court of Human Rights, notably in *Yalçinkaya v. Türkiye*, identified systemic and widespread violations of fair trial rights, legal certainty, and freedom of association, with tens of thousands of similar cases pending domestically and before the Court.⁷

II. JUDICIAL INDEPENDENCE AS A CORE REQUIREMENT OF ARTICLE 6 § 1

6. Judicial independence and impartiality constitute essential elements of the right to a fair trial under Article 6 § 1 of the Convention. Independence requires that courts be free from external influence, particularly from the executive and legislative branches, and that sufficient institutional guarantees exist to exclude legitimate doubts in this regard.

7. The Court has emphasised that even in the absence of evidence of subjective bias, proceedings may violate Article 6 § 1 where the circumstances objectively justify doubts as to a tribunal's independence.⁸

² Rafal Manko, Judicial independence in the case law of the European Court of Human Rights, Members' Research Service PE 762.305 – May 2024, p.3-5. Judicial independence in the case law of the European Court of Human Rights.

³ ICJ – International Commission of Jurists, *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, 2018, <https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>; European Commission, *Key findings of the 2016 Report on Turkey*, Memo Nov 9, 2016 Brussels https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_16_3639/MEMO_16_3639_EN.pdf; *Joint letter to European Institutions on the anniversary of the 2016 Coup in Turkey*, 14 July 2022; *Baş v. Türkiye*, no. 66448/17 (3 March 2020) para 13 and *Alparslan Altan v. Türkiye*, no. 12778/17 (16 April 2019) para 14.

⁴ Venice Commission, *Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016*, 12 December 2016, §§ 135, 136, [https://www.venice.coe.int/webforms/documents/default.aspx?pdfFile=CDL-ad\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdfFile=CDL-ad(2016)037-e)

⁵ Press statement on the position of the HSYK in the ENCI, 28 September 2016, <https://www.enci.eu/index.php/node/444>

⁶ Country Report, Commissioner for Human Rights of the Council of Europe Dunja Mijatović, Strasbourg, 19 February 2020 CommDH (2020)1, <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>

⁷ *Yüksel Yalçinkaya v. Türkiye* [GC], no. 15669/20 (26 September 2023) § 414.

⁸ *Morice v. France* [GC], no. 29369/10, 23 April 2015, § 78.

8. In assessing independence, the Court has attached particular importance to the manner of appointment of judges, the duration of their term of office, the existence of safeguards against outside pressure, and whether the body presents an appearance of independence.⁹

III. THE POST-2017 STRUCTURE OF THE COUNCIL OF JUDGES AND PROSECUTORS (HSK)

9. The Council of Judges and Prosecutors (HSK) is the body responsible for the governance of the judiciary in Türkiye. It exercises decisive authority over judicial appointments, promotions, transfers, disciplinary proceedings, and dismissals.¹⁰

10. Following the constitutional amendments adopted by referendum in 2017, the structure of the HSK was fundamentally altered. Under the current constitutional framework:

- four of the thirteen members are appointed directly by the President of the Republic;
- seven members are elected by the Grand National Assembly of Türkiye (TBMM);
- the Minister of Justice and the Deputy Minister of Justice are members ex officio.

11. In the present political configuration, the President simultaneously serves as the leader of the ruling political party, which also holds a parliamentary majority. As a result, the executive and legislative branches function as a unified political authority¹¹, particularly in matters relating to HSK appointments.

12. This configuration means that the overwhelming majority of HSK members are selected by political actors aligned with the executive, while judges and prosecutors elected by their peers no longer play any meaningful role in determining the composition of the body governing their professional careers.¹²

13. The Venice Commission has repeatedly warned that such a model poses a serious risk to judicial independence, especially within a presidential system, and has stressed that judicial councils must be shielded from political dominance.¹³

⁹ Campbell and Fell v. the United Kingdom, nos. 7819/77 and 7878/77 (28 June 1984) para 78.

¹⁰ Turkish Constitution, Articles 159 and 140.

¹¹ The Venice Commission Opinion No. 875/2017 CDL-AD(2017)005 para 128.

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)005-e)

¹² Ibid para 119.

¹³ The Venice Commission Opinion No. 875/2017 CDL-AD(2017)005 para 116 “*The Venice Commission recalls that according to European standards, at least a substantive part of the members of a High Judicial Council should be judges appointed by their peers. The Committee of Ministers of the Council of Europe in its Recommendation CM/Rec(2010)12 stated that: “Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.” [...] “The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peer”*”

The Venice Commission in its Opinion adopted in December 2024 has also concluded that the Turkish Council of Judges and Prosecutors lacks independence as it is designed to be dominated by the executive under the current Constitution.¹⁴

The Council of Europe's Committee of Ministers, with regard to non-implementation of the ECtHR's Kavala judgment, during the 1507th (DH) meeting of Ministers' Deputies in September 2024, recalled the Committee's previous decisions "strongly urging the Turkish authorities to take all legislative and other measures to ensure independence of the judiciary, in particular by securing the structural independence of the Council of Judges and Prosecutors from the executive, and deeply regretted once again the absence of any progress on this issue".¹⁵

14. These concerns bear directly on whether judges adjudicating sensitive cases can reasonably be regarded as insulated from career-related pressures originating outside the judiciary.¹⁶

IV. REMOVAL OF PARLIAMENTARY DECISIONS FROM CONSTITUTIONAL REVIEW

A. The Post-2017 Structure of the Constitutional Court

15. Gaining control of the Council of Judges and Prosecutors also indirectly strengthens the President's influence over the Constitutional Court. Changes to the appointment of HSK members affect the Constitutional Court by increasing executive influence. The HSK elects members of the Court of Cassation and the Council of State, and these bodies nominate candidates for the Constitutional Court, who are then appointed by the President. At the same time, the Constitutional Court loses its power to review laws that authorize decree-laws, because the President no longer needs an empowering law to issue decrees. Although laws formally prevail over presidential decrees, the amendments do not give the Court clear authority to resolve conflicts between them. Overall, the impact goes beyond reducing the number of justices from 17 to 15, as presidential decree powers expand without effective constitutional oversight.¹⁷

B. The Constitutional Court's 2025 Decision

16. The risks inherent in the post-2017 structure of the HSK were significantly aggravated by a decisive shift in constitutional jurisprudence in 2025.

17. In a decision published on 10 November 2025, the Turkish Constitutional Court declared that a TBMM decision concerning the election of HSK members was not subject to constitutional review, on the ground that it did not relate to "parliamentary working procedures".¹⁸

¹⁴ CDL-AD(2024)041, "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) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2024\)041-c](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)041-c)

¹⁵ <https://search.coe.int/cm?i=0912594880261760>

¹⁶ *Findlay v. the United Kingdom*, no. 22107/93, para 73

¹⁷ The Venice Commission Opinion No. 875/2017 CDL-AD(2017)005 paras 121-128.

¹⁸ <https://www.resmigazete.gov.tr/eskiler/2025/11/20251110-4.pdf>

18. This interpretation marked a departure from decades of settled Constitutional Court case-law, under which any parliamentary act producing effects equivalent to a rule of procedure was subject to constitutional scrutiny regardless of its formal designation.¹⁹

19. By narrowing this doctrine, the Constitutional Court effectively created a broad zone of immunity for parliamentary decisions, allowing the parliamentary majority to act without constitutional oversight even where explicit constitutional rules are at stake.

C. Unreviewed Constitutional Violations in HSK Elections

20. The practical consequences of this shift were illustrated during the 2023–2025 HSK election process, which involved several clear constitutional violations, including:

- the failure to apply a constitutionally mandated drawing-of-lots procedure;
- the formation of parliamentary commissions in breach of proportional representation requirements;
- the election of a candidate lacking constitutionally required qualifications.²⁰

21. None of these violations were reviewed by the Constitutional Court. As a result, the body responsible for governing the judiciary was constituted through procedures effectively insulated from constitutional control.²¹

22. The Court has held that where rules governing judicial appointments are systematically disregarded or rendered ineffective, tribunals may no longer be regarded as “established by law” within the meaning of Article 6 § 1.²²

23. In Türkiye, the systematic weakening of rules governing judicial appointments is illustrated by the abolition of the minimum written examination score for entry into the judiciary. The requirement to obtain at least seventy points out of one hundred in the written examination for admission to the judiciary was as of 6 January 2017 removed by Decree Law No. 680, which repealed the phrase “provided that they score at least seventy points out of one hundred in the written examination” from Article 9/A of the Law on Judges and Prosecutors (Law No. 2802).²³ Consequently, following this amendment, the statutory seventy-point threshold was no longer included in the text of the law, allowing candidates to be admitted without meeting any minimum objective threshold. The authorities later announced the reintroduction of the score

¹⁹ AYM (1968, February 27). Karar [Constitutional Court decision applying the “de facto Rules of Procedure amendment” doctrine] <https://www.resmigazete.gov.tr/arsiv/13004.pdf>

²⁰ Ali Rıza Coban, Anayasa Mahkemesinin HSK Üyelik Seçimine İlişkin Kararı Üzerine, <https://oad.org.tr/blog/anayasa-mahkemesinin-hsk-uyelik-secimine-iliskin-karari-uzerine/>
Ertuğrul Kaan Yıldırım, Anayasa Mahkemesi'nin Parlamento Kararları Karşısındaki Zor Meşruiyet Sınavı, <https://birikimdergisi.com/guncel/12231/anayasa-mahkemesi-nin-parlamento-kararlari-karsisindaki-zor-mesruiyet-sinavi>

²¹ Ibid.

²² Guðmundur Andri Ástráðsson v. Iceland [GC], 26374/18, §§ 242–247.

²³ Decree Law No. 680 on Certain Measures Taken Under the State of Emergency, Official Gazette, 6 January 2017, No. 29940 (repealing the phrase concerning the seventy-point requirement in Article 9/A of Law No. 2802).

requirement.²⁴ Subsequently, the requirement was reinstated by Article 4 of Law No. 7165 dated 20 February 2019 (Law on Amendments to the Criminal Procedure Code and Certain Other Laws), which reinserted the phrase into the first sentence of the fifth paragraph of Article 9/A of Law No. 2802.²⁵ During this period, a significant number of judges and prosecutors were recruited under a framework lacking a binding and objective examination criterion.^{26,27} The removal of this core safeguard rendered an essential rule governing judicial recruitment ineffective in practice and undermined the predictability and merit-based nature of the appointment system. In line with the Court's case-law, such a systematic weakening of appointment rules raises serious doubts as to whether courts composed of judges appointed under these conditions can still be regarded as "established by law" within the meaning of Article 6 § 1 of the Convention.

24. The Turkish situation demonstrates not an isolated defect, but a structural disabling of constitutional safeguards in the sphere of judicial governance.

V. SYSTEMATIC NON-EXECUTION OF THE COURT'S JUDGMENTS

25. The Court has consistently underlined that respect for binding judicial decisions is an essential component of the rule of law and of judicial independence.²⁸

26. In its judgment of 10 December 2019, the Court held that the applicant's detention lacked reasonable suspicion, pursued an ulterior political purpose, and violated Articles 5 and 18 of the Convention.²⁹

27. In its judgment of 11 July 2022, delivered under Article 46 § 4, the Court formally established that Türkiye had failed to comply with the 2019 judgment and reiterated that the applicant should be released immediately.³⁰

28. Despite these binding judgments, domestic courts have repeatedly refused to release the applicant. In September 2023, the Court of Cassation upheld his aggravated life sentence, disregarding the Court's findings.³¹

²⁴ Yargıda sınavsız alım: Barajsız kadrolaştlar, Cumhuriyet, 04.12.2018, <https://www.cumhuriyet.com.tr/haber/yargida-sinavsiz-alim-barajsiz-kadrolastilar-1160224>

²⁵ Law No. 7165 on Amendments to the Criminal Procedure Code and Certain Other Laws, Official Gazette, 20 February 2019, No. 30692, Art. 4 (reintroducing the seventy-point requirement into Article 9/A(5) of Law No. 2802).

²⁶ The HSK report (0403202413092023-vili-faaliyet-raporupdf.pdf) shows that in the years 2017-2019 a total of 5988 judges and prosecutors were admitted to the profession.

²⁷ See also: The Venice Commission Opinion No. 1196/2024 CDL-AD(2024)041 para 19: *Moreover, during the last six years, not only had the dismissed judges to be replaced, but the overall number of judges was increased to about 25.000, requiring the recruitment of many young and often (perceived as) inexperienced judges.*

²⁸ Rafal Manko, Judicial independence in the case law of the European Court of Human Rights, Members' Research Service PE 762.305 – May 2024, p.5 Judicial independence in the case law of the European Court of Human Rights

²⁹ Kavala v. Turkey, no. 28749/18, 10 December 2019.

³⁰ Kavala v. Turkey (Article 46 § 4), 11 July 2022.

³¹ Court of Cassation, 3rd Criminal Chamber, decision of 28 September 2023.

<https://s.gazeteduvar.com.tr/storage/files/documents/2023/09/28/yargitavin-gczi-parki-davasi-gerek-gdnm.pdf>

29. The Parliamentary Assembly of the Council of Europe (PACE) has characterised this persistent non-execution as an unprecedented challenge to the Convention system and has called for targeted responses.³² In the preceding years PACE adopted Resolution 2156 (2017), making Türkiye the first and only Council of Europe member state to be placed back under monitoring. And in 2022, the Committee of Ministers of the Council of Europe formally initiated an infringement procedure against Türkiye for non-compliance with judgments of the European Court of Human Rights.³³

30. From the perspective of Article 6 § 1, this sustained non-execution demonstrates that alignment with Strasbourg case-law is institutionally discouraged, while defiance carries no apparent professional consequences.³⁴

In Resolution 2518 (2023), PACE issued a direct and unprecedented call for targeted sanctions against Turkish officials involved in the unlawful detention of Osman Kavala³⁵ as follows:

“The Assembly calls on Council of Europe member and observer States and the European Union to: (...) apply, should Türkiye fail to release Osman Kavala, ‘Magnitsky legislation’ or other existing legal instruments to impose targeted sanctions against those officials, including prosecutors and judges, who are responsible for the unlawful and arbitrary deprivation of liberty of Osman Kavala.”

In its Resolution 2518 (2023), PACE further strongly condemned Türkiye’s ongoing refusal to implement the ECtHR’s Kavala judgments. The Assembly underscored that this defiance represents an unprecedented and systemic breach of the rule of law, threatening the credibility of the Council of Europe itself. The Assembly also believed it was time to take steps to initiate the complementary joint procedure foreseen in Resolution 2319 (2020) “Complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations”.³⁶

VI. JUDICIAL CAREER INCENTIVES AND STRUCTURAL PRESSURE

31. The interaction between the politically dominated HSK, the absence of constitutional review, and the non-execution of this Court’s judgments has generated structural pressure on judges and prosecutors.

32. Publicly documented cases indicate that judges and prosecutors who have played decisive roles in maintaining the applicant’s detention have subsequently been appointed or promoted to senior judicial or executive positions.³⁷

³² PACE Resolution 2518 (2023); Recommendation 2261 (2023).

³³ <https://search.coe.int/cm?i=0900001680a56447> and <https://www.hrw.org/news/2022/02/02/turkey-council-europe-votes-infringement-process>

³⁴ PACE Resolution 2518 (2023); Recommendation 2261 (2023).

³⁵ <https://pace.coe.int/en/files/33147/html>

³⁶ Call for the immediate release of Osman Kavala, Resolution 2518 (2023), <https://pace.coe.int/en/files/33147/html>

³⁷ <https://haber.sol.org.tr/haber/avmde-iktidar-operasyonu-yuksek-mahkemenin-basina-gecirilmek-istenen-irfan-fidan-kimdir>

- <https://artigercek.com/guncel/hskden-gezi-kobane-ve-kavala-davasinin-savcilarinin-da-dahil-oldugu-11-atama-144919h>

33. Within the scope of this submission, particular attention must be drawn to the Association of Judicial Unity (Yargıda Birlik Derneği – YBD)³⁸, a judicial association that emerged in 2014 with overt governmental support and rapidly acquired decisive influence over the institutional governance of the judiciary through its control of the Council of Judges and Prosecutors (HSK). Unlike an ordinary professional association, YBD has functioned as an executive-aligned structure through which judicial careers are shaped, promotions secured, and disciplinary mechanisms activated.³⁹ The treatment of the Association of Judges and Prosecutors (YARSAV) provides a revealing counter-example. YARSAV, an independent association openly critical of executive interference, was dissolved by decree during the state of emergency, while its president, a serving judge, was arrested and imprisoned.⁴⁰ It goes without saying that reprisals against judicial associations and their leaders in retaliation against their criticism regarding executive overreach are capable, by their chilling effect on other judges, of undermining judicial independence.⁴¹ The simultaneous empowerment of a government-aligned association and the punitive eradication of an independent one exposes a structural policy of rewarding loyalty and sanctioning independence within the judiciary.

34. Such a framework is irreconcilable with the guarantees of Article 6 § 1 of the Convention. The Court has consistently held that independence must be assessed not only on the basis of formal safeguards, but also by examining whether judges are exposed to pressures that may influence their decision-making and whether such pressures create an objectively justified fear of repercussions.⁴² Where judges affiliated with YBD are systematically promoted to higher

-
- <https://bianet.org/haber/gezi-8-lisinin-tutukluluguna-vapilan-itiraza-ret-261645>
 - <https://www.bbc.com/turkce/articles/cpwxlvlygr5o>
 - <https://www.frontlinedefenders.org/tr/case/gezi-park-trial>
 - <https://www.osmankavala.org/tr/hukuki-surec/kronoloji>
 - <https://www.diken.com.tr/osman-kavalanin-itirazini-degerlendirecek-mahkeme-heveti-degistirildi/>
 - <https://www.bbc.com/turkce/haberler-turkiye-61190354>
 - <https://mediascope.tv/2024/04/09/aihm-osman-kavalanin-ikinci-basvurusunu-oncelikli-olarak-incelemeye-karar-verdi/>
 - https://www.europarl.europa.eu/doceo/document/TA-9-2022-0199_EN.pdf
 - <https://www.dw.com/tr/sedef-kaba%C5%9F%C4%B1-tutuklayan-h%C3%A2kimin-osman-kavala-karar%C4%B1nda-da-imzas%C4%B1-%C3%A7%C4%B1kt%C4%B1/a-60528515>
 - <https://bianet.org/haber/af-orgutu-osman-kavala-ve-tum-gezi-saniklari-beraat-ettirilmeli-259282>
 - <https://www.voaturkce.com/a/osman-kavala-icin-dorduncu-kez-yarg%C4%B1lanma-sureci-baslayacak-mi/7611126.html>
 - <https://www.diken.com.tr/osman-kavalanin-veniden-vargilanma-talebi-reddedildi/>
 - <https://www.indvtrk.com/node/52506/haber/630-ug%C3%BCnd%C3%BCr-tutuklu-olan-osman-kavalan%C4%B1n-ov-%C3%A7oklu%C4%B1Fuyla-tutuklulu%C4%B1unun-devam%C4%B1na-karar>
 - <https://www.reuters.com/world/turkeys-erdogan-appoints-new-justice-interior-ministers-2026-02-11/>

³⁸ <https://yargidabirlik.org.tr/> Access: 04.02.2026

³⁹ Joint Submission for the Second Periodic Review of Turkey before the United Nations Human Rights Committee, 15 September 2024, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FCSS%2FTUR%2F59748&lang=en p.10,11.

⁴⁰ Diego García-Sayán, former UN Special Rapporteur, 'Shame on You', <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/01/Sayan-article-English.pdf> & Václav Havel Human Rights Prize 2017 awarded to Murat Arslan, <https://www.coe.int/en/web/portal/-/vaclav-havel-human-rights-prize-2017-awarded-to-murat-arslan>; MEDEL in support of Murat, <https://medelnet.eu/medel-in-support-of-murat/>

⁴¹ See also with regard to violation of article 18 read in conjunction with article 10 ECHR Miroslava Todorova v. Bulgaria, no. 40072/13, (1 October 2021) regarding disciplinary proceedings and sanctions against President of the judges' association.

⁴² Findlay v. the United Kingdom, no. 22107/93, § 73; Denisov v. Ukraine [GC], no. 76639/11, (25 September 2018) §§ 63–67

courts and key institutional positions, while judges associated with independent organisations such as YARSAV are dismissed, prosecuted, or imprisoned, the appearance of independence is decisively destroyed. As the Court has emphasised, a tribunal cannot be regarded as “established by law” where its composition and functioning are the product of executive manipulation.⁴³ In a system governed by political reward and punishment, a reasonable observer cannot be expected to believe that judges adjudicate disputes free from external influence. Judicial independence, in such circumstances, is not merely weakened: it is structurally negated.

35. The decisive question is whether the institutional framework gives rise to legitimate and objectively justified doubts as to independence.⁴⁴

VII. IMPACT ON POLITICALLY SENSITIVE CASES

36. The structural deficiencies outlined above are observable in other politically sensitive proceedings, including cases involving elected Kurdish mayors, opposition politicians, journalists, and civil society actors.⁴⁵

37. The refusal to implement binding Constitutional Court judgments, as illustrated by the Can Atalay case, further confirms the erosion of judicial guarantees in politically salient matters.⁴⁶

38. Taken cumulatively, these factors demonstrate that where political interests are engaged, judicial proceedings are conducted within an environment in which institutional independence is objectively open to doubt.

VIII. CONCLUSION

39. The post-2017 restructuring of the HSK, the removal of parliamentary decisions from constitutional review, the mass dismissal of judges and prosecutors following 15 July 2016 without individualized judicial safeguards, the abolition of the minimum written examination score for entry into the judicial profession, and the systematic non-execution of this Court’s

⁴³ *Reczkowicz v. Poland*, no. 43447/19, (22 July 2021) §§ 253–259; *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, (7 May 2021), §§ 271–276).

⁴⁴ *Case of Micallef v. Malta* (Application no. 17056/06), (15 October 2009) § 98.

⁴⁵ European Commission, Commission Staff Working Document Turkey 2025 Report, Brussels, 4.11.2025 SWD(2025) 756 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025SC0756>

⁴⁶ Balamir Coşkun, Gülçin; Tombuş, Ertuğ: *The Rule of Arbitrariness as the New Constitutional Order in Turkey*, *VerfBlog*, 2023/11/14, <https://verfassungsblog.de/the-rule-of-arbitrariness-as-the-new-constitutional-order-in-turkey/>, DOI: 10.59704/d41a7ae8ac03b28c.

^{*} “Finally, the consolidation of influence and even effective control over the judiciary is also evident in the continued political pressure on, and interference with, the judiciary in cases concerning perceived dissidents or others viewed as obstructing the interests of the ruling coalition. For instance, after President Erdoğan’s recent reference to judges and prosecutors dismissed after the coup attempt as “flies” of “the FETÖ swamp” and criticized the Council of State’s decision to reinstate 387 of them, Minister of Justice Yılmaz Tunç announced that the Council of State decision would be re-examined by the CJP.[67] In the case of imprisoned opposition MP Can Atalay convicted in the Gezi Park trial, President Erdoğan openly warned the TCC, which had found violations of Mr. Atalay’s rights, “not to underestimate the steps taken by the Court of Cassation”, implying potential repercussions against the TCC members.[68]”. Human Rights Watch, *Defiance of European Court Judgments and Erosion of Judicial Independence*, June 16, 2025, [Defiance of European Court Judgments and Erosion of Judicial Independence](https://www.hrw.org/report/2025/06/16/defiance-european-court-judgments-and-erosion-judicial-independence) | Human Rights Watch

judgments have combined to produce a structural weakening of judicial independence in Türkiye.

40. The existence of career incentives favouring alignment with executive interests, together with the absence of effective safeguards against external pressure, creates an objective appearance of dependence incompatible with Article 6 § 1 of the Convention.

Hence, in line with the Venice Commission Opinion of 2024⁴⁷ as well as the Ministers' Deputies conclusions⁴⁸ during its 1507th meeting (DH) in September 2024, reforms of the composition and the procedure for the election of the members of the Council of Judges and Prosecutors, would be key to ensuring the independence of the judiciary.

41. The interveners respectfully invite the Court to take full account of this institutional and constitutional context when assessing the fairness of the proceedings in the present case.

Europe, 12/2/26

Sylvain Mérenne



President, Association of European Administrative Judges (AEAJ)

Sabine Matejka

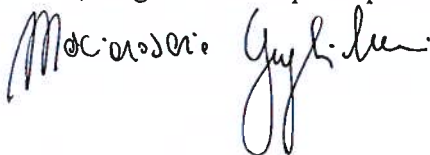
President, European Association of Judges (EAJ)

Tamara Trotman

Chair Judges for Judges

Mariarosaria Guglielmi

President, Magistrats Européens pour la Démocratie et les Libertés (MEDEL)



⁴⁷ CDL-AD(2024)041, "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).

⁴⁸ <https://search.coe.int/cm?i=0912594880261760>