



**THE JUSTICE AND HUMAN RIGHTS
FOUNDATION**

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“The Systematic Failure of Turkiye to Implement the ECHR Decisions”

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WHO WE ARE

The Justice and Human Rights Foundation was established by academics and public and security experts.

The fields of expertise of the founders and volunteers of our foundation include human rights, political science, international relations, public administration, security sciences, criminal justice, criminology, and sociology.

Our foundation, in general, aims to;

- work against human rights violations,
- support those who are exposed to violations of rights,
- support people's right to a fair trial,
- share knowledge with the public on issues of justice, freedom, and security.

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I- INTRODUCTION

Context of Turkiye and ECHR Jurisdiction

Turkiye, a founding member¹ of the Council of Europe, ratified the European Convention on Human Rights (ECHR) in 1954, obligating itself to protect the fundamental rights and freedoms enshrined in the Convention. As part of this commitment, Turkiye accepted the jurisdiction of the European Court of Human Rights (ECtHR) to adjudicate alleged violations of the Convention by the state. The ECtHR serves as a supranational court tasked with interpreting the Convention and ensuring that member states adhere to its provisions. The Court's judgments are legally binding² on all Council of Europe members, including Turkiye, which has a duty under Article 46 of the Convention to abide by final judgments.

Despite this, Turkiye has frequently failed to implement the ECtHR's rulings, particularly in politically sensitive cases involving opposition figures, journalists, and civil society leaders. This failure to comply with international human rights law has raised concerns about the rule of law, judicial independence, and democratic accountability in Turkiye.

II- Overview of Turkiye's Obligations under the European Convention on Human Rights (ECHR)

Turkiye's non-compliance with ECtHR judgments affects several key areas of civil, political, and human rights law. The following are the most prominent legal areas where Turkiye's obligations have been challenged:

A. Civil and Political Rights: Freedom of Expression, Assembly, and the Press

One of the most significant areas of Turkiye's non-compliance involves violations of freedom of expression, assembly, and the press. Turkiye has faced numerous ECtHR rulings condemning its detention and prosecution of journalists, political opposition members, and activists for exercising their right to free speech. Cases such as *Altan Brothers v. Turkiye*³ and *Ahmet Şık v. Turkiye*⁴ highlight how the government's actions, particularly during periods of heightened political tension, have restricted freedoms protected under Articles 10 and 11 of the ECHR.

The ECtHR has consistently ruled that Turkiye's broad application of anti-terrorism laws to silence dissent violates the Convention. Despite these rulings, the Turkish government has often delayed or refused to implement measures that would ensure these rights are fully respected.

¹ <https://www.mfa.gov.tr/council-of-europe.en.mfa>

² https://ks.echr.coe.int/documents/d/echr-ks/guide_art_46_eng

³ <https://www.euronews.com/2021/04/13/Turkiye-violated-rights-of-jailed-journalist-ahmet-altan-echr-finds>

⁴ [https://hudoc.echr.coe.int/fre#{%22tabview%22:\[%22document%22\],\[%22itemid%22:\[%22001-206411%22\]\]](https://hudoc.echr.coe.int/fre#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-206411%22]])

B. Torture, Inhuman Treatment, and Detention Conditions

The prohibition against torture and inhuman or degrading treatment is enshrined in **Article 3 of the ECHR**, and Türkiye has a well-documented history of ECtHR judgments finding it in violation of this article. This includes cases related to the treatment of detainees, particularly in the context of political unrest or counter-terrorism operations. Allegations of torture, ill-treatment, and poor detention conditions have been widespread, and the ECtHR has repeatedly called on Türkiye to improve its investigative and judicial processes concerning such abuses.

The Victims of the Emergency Decree Platform has information on 12 women who became pregnant while in custody and some of them had to give birth. The women were also forced to other actions, such as, to perform oral sex with police officers⁵.

Despite these rulings, Turkish authorities have often failed to provide adequate redress to victims or take effective action to prevent further violations.

C. Due Process Violations

Türkiye's judicial independence **and** right to a fair trial under **Article 6 of the ECHR** have come under increasing scrutiny, particularly in cases involving politically motivated trials. High-profile cases like those of opposition politicians (*Selahattin Demirtaş v. Türkiye*)⁶ and civil society leaders (*Osman Kavala v. Türkiye*)⁷ exemplify how due process violations have become a tool for silencing political dissent. The ECtHR has repeatedly found that these cases involved violations of fair trial guarantees, yet Türkiye has failed to take meaningful steps to correct these deficiencies.

The use of prolonged pre-trial detention, politicized charges, and lack of judicial independence are central to many of these violations. The ECtHR's judgments have called for comprehensive reforms to Türkiye's judicial system to ensure compliance with due process standards, but these calls have largely gone unheeded.

III. Key Examples of Non-Compliance

Türkiye's systematic failure to implement judgments of the European Court of Human Rights (ECtHR) has been particularly pronounced in high-profile cases involving political opposition, human rights defenders, journalists, and minority groups. This section examines key cases of

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[https://migri.fi/documents/5202425/5914056/FIS_Turkey_Individuals+associated+with+the+G%C3%BClen+movement_June_2024+\(2\).pdf/a14fa35f-a65a-9339-e331-fec99e9cd8c3/FIS_Turkey_Individuals+associated+with+the+G%C3%BClen+movement_June_2024+\(2\).pdf?t=1723630918594](https://migri.fi/documents/5202425/5914056/FIS_Turkey_Individuals+associated+with+the+G%C3%BClen+movement_June_2024+(2).pdf/a14fa35f-a65a-9339-e331-fec99e9cd8c3/FIS_Turkey_Individuals+associated+with+the+G%C3%BClen+movement_June_2024+(2).pdf?t=1723630918594) page 45

⁶ <https://hudoc.echr.coe.int/fre?i=001-207173>

⁷ [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-199515%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-199515%22])

non-compliance, which highlight the broader human rights implications of Türkiye's disregard for ECtHR rulings.

A. Human Rights Defenders and Political Cases

Yuksel Yalcinkaya v. Turkiye⁸

The case of *Yuksel Yalçinkaya v. Türkiye* highlights serious issues in the Turkish judiciary, especially in the aftermath of the 2016 coup attempt. The European Court of Human Rights (ECHR) identified systemic problems, including the judiciary's reliance on questionable evidence like ByLock, an encrypted messaging app allegedly used by FETÖ/PDY members.

The *Yuksel Yalçinkaya v. Türkiye* case is a significant example of Türkiye's ongoing challenges in adhering to the European Convention on Human Rights, especially in the context of the post-coup environment.

The problems identified in this case are not isolated to the individual applicant but represent deeper systemic flaws within Türkiye's legal and judicial system. The over-reliance on ByLock evidence, often without solid proof that the users were aware of the app's alleged purpose, is particularly concerning.

The fact that there are approximately 8,500 similar applications before the ECHR, all involving complaints about the right to a fair trial and/or no punishment without law, highlights the urgent need for reform. This overwhelming volume of cases suggests that the failures identified in *Yalçinkaya* are widespread and affect thousands of individuals, many of whom have been convicted under similar circumstances.

Selahattin Demirtaş v. Turkiye (No. 2)

Selahattin Demirtaş⁹, a Kurdish politician and former co-chair of the Peoples' Democratic Party (HDP), has been subject to prolonged detention since his arrest in 2016 on charges related to terrorism and incitement to violence. In its landmark judgment in 2018, the ECtHR ruled that Demirtaş's detention was politically motivated and aimed at stifling pluralism and limiting political debate, which constitutes a violation of Article 10 (freedom of expression), Article 5 (right to liberty and security), and Article 18 (limitation on use of restrictions on rights) of the European Convention on Human Rights.

The Court found that the Turkish government had failed to provide sufficient evidence justifying Demirtaş's prolonged pre-trial detention and emphasized the urgency of his release. Despite this, Türkiye has refused to implement the Court's ruling, keeping Demirtaş imprisoned. The continued detention of Demirtaş not only violates his individual rights but also

⁸ <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%5D,%22itemid%22:%5B%22002-14187%22%5D%7D>

⁹ <https://demirtasinfo.com/tr/hakkinda/biyografi>

signals a broader trend of political repression and undermines Turkiye's commitment to democratic principles.

Osman Kavala v. Turkiye

Osman Kavala¹⁰, a prominent philanthropist and civil society leader, was arrested in 2017 and accused of attempting to overthrow the government during *the 2013 Gezi Park Protests*¹¹ and the failed coup attempt of 2016. In 2019, the ECtHR ruled that Kavala's detention was arbitrary and lacked sufficient evidence to justify the charges. The Court found that Kavala's arrest was part of a broader strategy to silence civil society and deter political dissent, violating Articles 5 and 18 of the Convention.

Despite the Court's judgment calling for Kavala's immediate release¹², the Turkish government has not complied and has instead continued to hold Kavala in detention under revised charges. This non-compliance has drawn widespread international condemnation and reflects Turkiye's ongoing disregard for ECtHR rulings in politically sensitive cases.

B. Freedom of the Press and Expression

Altan Brothers v. Turkiye

In 2016, Ahmet Altan, a renowned journalist, and his brother Mehmet Altan, an academic, were arrested on charges of attempting to overthrow the government by allegedly supporting the 2016 coup attempt through media activities. The ECtHR ruled in 2018 that their imprisonment violated their right to freedom of expression (Article 10) and their right to liberty and security (Article 5). The Court found that the Turkish authorities had not provided any credible evidence linking the Altan brothers to the coup attempt and concluded that their detention was unjustified and politically motivated.

Despite the ruling, Ahmet Altan remained in prison for several more years, and although Mehmet Altan was eventually released, Turkiye's delayed implementation of the judgment underscored its broader pattern of non-compliance in cases concerning freedom of the press. The Altan brothers' case is emblematic of the Turkish government's use of anti-terrorism laws to suppress critical voices in the media, a practice that has been condemned by international human rights organizations.

C. Torture and Ill-treatment

Turkiye has been repeatedly found in violation of Article 3 of the ECHR, which prohibits torture and inhuman or degrading treatment. The ECtHR has ruled against Turkiye in numerous cases

¹⁰ <https://www.osmankavala.org/en/about-osman-kavala>

¹¹ https://www.amnesty.nl/content/uploads/2016/11/gezi_park_protests_en_eur44_022_2013.pdf?x13692

¹² <https://www.omct.org/en/resources/statements/Turkiye-osman-kavala-must-be-released-immediately>

involving allegations of torture and ill-treatment in detention centers, particularly in the context of political unrest, counter-terrorism operations, and the aftermath of the 2016 coup attempt.

One such case is **Bati and Others v. Turkiye**¹³, in which the Court found that Turkish authorities had failed to investigate credible allegations of torture and ill-treatment of detainees held in police custody. The Court emphasized that the lack of effective investigations into torture allegations violated Turkiye's obligations under the Convention and highlighted the culture of impunity that has developed in Turkiye's law enforcement and judicial systems.

Despite these rulings, Turkiye has not taken adequate steps to investigate or address systemic torture and ill-treatment in detention centers. The lack of accountability for such abuses further erodes trust in Turkiye's judicial system and undermines the protection of human rights within the country.

IV. Suggestions for Solutions

A- Strengthening Enforcement Mechanisms

The **Council of Europe (CoE)** plays a central role in ensuring compliance with ECtHR rulings, but the current enforcement mechanisms require strengthening to address persistent non-compliance. **Article 46(4)**, which allows the CoE's **Committee of Ministers** to refer a state to the ECtHR for failing to implement a judgment, remains underutilized. To enhance its effectiveness, the Committee of Ministers should:

Increase the **frequency of public resolutions** and diplomatic engagement specifically targeting states that fail to implement ECtHR rulings, including Turkiye.

Impose **targeted sanctions** on Turkish officials involved in obstructing ECtHR compliance, similar to the approach used in other cases of human rights violations. These sanctions could include travel bans and asset freezes, signaling the seriousness of Turkiye's breach of its obligations.

Establish a system of **periodic review** that closely monitors Turkiye's compliance with ECtHR rulings and triggers automatic review procedures when non-compliance persists for an extended period. This would hold Turkiye accountable on a continual basis, rather than relying on intermittent responses from the CoE.

Additionally, the CoE should consider coordinating with other international bodies, such as the **European Union**, to increase pressure on Turkiye through diplomatic channels.

B- Support for Civil Society

¹³ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-158562%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-158562%22]})

Civil society in Türkiye plays an essential role in holding the government accountable for human rights abuses. However, civil society organizations (CSOs) face increasing repression and legal challenges. Strengthening their capacity is vital for ensuring sustained pressure on the Turkish government. Key proposals include:

Increased funding and technical support for Turkish CSOs, particularly those focused on human rights advocacy, legal aid, and monitoring state compliance with ECtHR rulings. International actors, including the **European Union, UN agencies, and international NGOs**, should prioritize capacity-building initiatives that provide legal training, advocacy tools, and financial resources to CSOs.

Promoting **international partnerships** between Turkish CSOs and foreign organizations to amplify their efforts and create a network of support. Such partnerships can enable Turkish civil society to access broader platforms for advocacy, including at the **UN Human Rights Council** and **EU Parliament**.

Encouraging **legal advocacy and strategic litigation** in Turkish courts that invoke ECtHR judgments, pushing the judiciary to respect the binding nature of these rulings. International partners can support such initiatives by providing technical expertise and resources to challenge government actions that undermine the rule of law.

D- Promoting Judicial Reforms in Türkiye

One of the key barriers to compliance with ECtHR rulings is the **lack of judicial independence** in Türkiye. To address this, comprehensive judicial reforms are needed to restore the rule of law and ensure that the judiciary operates free from political influence. Key recommendations include:

Reforming the appointment process for judges and prosecutors to reduce political interference. This includes enhancing the transparency and independence of the **Council of Judges and Prosecutors (HSK)**, which currently operates under significant government control. Ensuring that appointments to the judiciary are based on merit and not political loyalty is essential to restoring judicial independence.

Implementing **institutional safeguards** to protect judges from political pressure, including establishing mechanisms for the judiciary to review its decisions independently and without fear of reprisal. This would prevent the politicization of sensitive cases, particularly those related to human rights, political dissent, and opposition figures.

Providing **training and capacity-building programs** for judges and legal professionals on the application of ECtHR rulings and the importance of upholding international human rights standards. This would help ensure that the judiciary is both equipped and willing to implement ECtHR decisions effectively.

E- Diplomatic Pressure and Bilateral Relations

84. **International diplomatic pressure** is crucial in pushing Turkiye towards compliance with its ECtHR obligations. Turkiye's key international partners, particularly the European Union (EU), United States, and Council of Europe, must take a more proactive role in using diplomatic and economic levers to encourage Turkiye to respect human rights and comply with ECtHR judgments. Key strategies include:

Leveraging economic ties: The EU, which remains Turkiye's largest trading partner, can utilize its economic leverage to condition future trade agreements and financial assistance on tangible progress in human rights compliance. **Customs Union modernization** discussions, for example, can be linked to Turkiye's respect for ECtHR rulings.

Targeted diplomatic engagement: Diplomatic missions in Turkiye can prioritize **human rights dialogues** with the Turkish government, emphasizing the need for compliance with ECtHR rulings as a key factor in maintaining strong bilateral relations. These discussions can also include Turkiye's role within the **Council of Europe** and its standing in international human rights forums.

Bilateral pressure from influential states: Countries such as Germany, France, and the United States can increase bilateral diplomatic pressure by raising Turkiye's human rights record in international settings, including NATO, the G7, and other forums where Turkiye has strategic interests. Coordinated efforts from these influential states can reinforce the message that non-compliance with ECtHR judgments will have serious consequences for Turkiye's international standing.

Implementing these solutions requires a **coordinated international effort**, combining diplomatic pressure, legal reforms, and support for civil society, to ensure Turkiye adheres to its human rights obligations. By strengthening enforcement mechanisms and promoting judicial independence, the international community can create a pathway towards greater accountability and respect for human rights in Turkiye.

In conclusion, Turkiye's compliance with ECHR decisions is not just a legal requirement but a moral and political imperative. It is essential for restoring Turkiye's democratic values, improving international relations, and preventing further deterioration of human rights and rule of law within the country. Without immediate action, Turkiye risks deeper political instability, continued human rights abuses, and isolation from the international community.