



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Legal summary

August 2026

Kavala v. Türkiye (No. 2) [GC] - 2170/24

Judgment 25.8.2026 [GC]

Article 3

Degrading punishment

Inhuman punishment

Sentencing of applicant to aggravated life imprisonment, without prospect of release or of review of sentence to take account of changes in his personal situation or degree of risk posed by him: *violation*

Article 5

Article 5-1

Lawful arrest or detention

Arbitrariness of applicant's pre-trial detention, which was not based on reasonable suspicions, and unlawfulness of his post-conviction detention, resulting from execution of a sentence imposed at the close of proceedings marred by a flagrant denial of justice: *violation*

Article 6

Article 6-1

Criminal charge

Serious shortcomings in criminal proceedings leading to the applicant's conviction, affecting the fairness of the proceedings and the independence and impartiality of the courts: *violation*

Article 10

Article 10-1

Freedom of expression

Sentencing of the applicant to aggravated life imprisonment for his presumed strategic role in planning, coordination and leadership of violent incidents during the Gezi Park events, without examining his actual involvement, and at the cost of an unforeseeable extension of the criminal law: *violation*

Article 11

Article 11-1

Freedom of peaceful assembly

Sentencing of the applicant to aggravated life imprisonment for his presumed strategic role in planning, coordination and leadership of violent incidents during the Gezi Park events, without examining his actual involvement, and at the cost of an unforeseeable extension of the criminal law: *violation*

Article 18

Restrictions for unauthorised purposes

Prosecution of the applicant, his continued pre-trial detention and his conviction predominantly motivated by an ulterior motive, namely, to punish him for his role in the Gezi Park demonstrations and for expressing his opinions as a human-rights defender, and to silence him: *violation*

Article 35

Article 35-1

Exhaustion of domestic remedies

Applicant could not be criticised for failing to await the outcome of an individual application to the Constitutional Court, the effectiveness of which was seriously compromised in the particular circumstances of the case, before applying to the European Court: *preliminary objection dismissed*

Article 46

Article 46-2

Execution of judgment

General measures

Respondent State required to address systemic problems of detention and prosecution of political opponents, human-rights defenders and journalists on basis of criminal offences, the scope of which was extensively interpreted or artificially magnified, and execution of irreducible life sentences, in the absence of a genuine prospect of conditional release

Execution of judgment

Individual measures

Respondent State required to secure the applicant's release at the earliest possible date, and to eliminate the consequences of his conviction, which was to be regarded as null and void under Convention law

Facts – The applicant is a Turkish businessman who has been involved in setting up numerous non-governmental organisations and civil-society movements working in the

areas of human rights, culture, social studies, historical reconciliation and environmental protection.

The applicant has been deprived of his liberty without interruption since 18 October 2017, or for more than eight and a half years. He was initially suspected of having committed two offences: attempting to overthrow the Government through force and violence, within the meaning of Article 312 of the Criminal Code, in relation to the violent events in Istanbul's Gezi Park in May 2013, and attempting to overthrow the constitutional order, within the meaning of Article 309 of the Criminal Code, in relation to the military *coup d'état* of July 2016, which resulted in the declaration of a state of emergency until July 2018.

The case concerns the events following the Court's [Kavala v. Turkey](#) judgment of 10 December 2019, in which it found violations of Article 5 §§ 1 and 4 and of Article 18 taken together with Article 5 § 1 of the Convention, on account of the lack of reasonable suspicion to justify the applicant's initial and continued pre-trial detention in relation to the criminal offences set out in Articles 309 and 312 of the Criminal Code, and indicated that the applicant was to be released immediately.

In February 2020 the applicant was acquitted of the charge in relation to the Gezi Park events by the Istanbul 30th Assize Court ("the 30th Assize Court"). However, the decision to release him pending trial did not lead to his actual release. He was arrested on the same day in the context of an investigation into acts punishable under Article 309 of the Criminal Code, in relation to the attempted *coup d'état* of 15 July 2016, then placed in pre-trial detention on the following day. In February 2020 the Council of Judges and Prosecutors opened a disciplinary investigation against the three judges of the Istanbul 30th Assize Court who had acquitted the applicant and ordered his release. In March 2020 he was placed in pre-trial detention on a charge of military or political espionage, an offence set out in Article 328 of the Criminal Code. In January 2021 the Istanbul 3rd Regional Court of Appeal quashed the acquittal judgment of February 2020 and remitted the case to the Istanbul 13th Assize Court ("the 13th Assize Court"). In April 2022 the 13th Assize Court convicted the applicant of the charge under Article 312 of the Criminal Code, concerning the Gezi Park events, and sentenced him to aggravated life imprisonment, while also ordering that he continue to be held in detention. It considered that this conviction absorbed the charge, based on Article 309 of the Criminal Code, in relation to the attempted *coup d'état*. Lastly, the assize court acquitted him of the charge of military or political espionage and ordered that he be released in relation to this charge. The applicant's conviction was upheld on appeal in December 2022, then by the Court of Cassation in September 2023.

In June 2022 the applicant lodged an individual application with the Constitutional Court, complaining about his pre-trial detention. In October 2023 he lodged a second individual application with the Constitutional Court, complaining about his imprisonment as a result of his conviction at final instance.

In February 2022 the Committee of Ministers, responsible for supervising execution of the judgment, decided, in an interim resolution adopted under Article 46 § 4 of the Convention, to refer to the Court the question whether the Republic of Türkiye had failed to fulfil its obligation, under Article 46 § 1, to abide by the judgment. In its [Kavala v. Türkiye \(infringement proceedings\)](#) [GC] judgment of 11 July 2022, the Court concluded that this obligation had not been complied with.

Before the Court, the applicant complained about his deprivation of liberty since 10 December 2019 and the criminal proceedings which had given rise to a sentence of aggravated life imprisonment. On 16 December 2025 a Chamber of the Court relinquished jurisdiction in favour of the Grand Chamber.

Law – Article 35 § 1:

The Court could not disregard either the wholly exceptional circumstances of the present case or the applicant's personal situation. The applicant had been deprived of his liberty, without interruption, for more than eight and a half years. Throughout this entire period, he had consistently, diligently and unambiguously made use of all the available domestic remedies, without any of those approaches having led to his release or to adequate acknowledgement of the violations found, together with appropriate redress. In those conditions, the assessment of the objection alleging a failure to exhaust domestic remedies ought not to be formalistic: it had to be conducted in the light of a concrete assessment of the facts of the case, taking into consideration both the two previous judgments delivered by the Court in the proceedings concerning the applicant, and the full, sustained and diligent use made by him, over a particularly lengthy period, of the domestic mechanisms for the protection of fundamental rights in order to put forward the complaints that he raised under the Convention.

The applicant's case was characterised by a persistent failure to execute the Court's judgments, and by the lack of tangible effect on his situation of an acquittal judgment, in spite of the fact that he had remained deprived of his liberty for a very long period. The domestic proceedings following the [Kavala v. Turkey](#) judgment had failed to remedy the violations found therein, and in the subsequent [Kavala v. Türkiye \(infringement proceedings\)](#) [GC] judgment.

The proceedings before the Constitutional Court concerning the applicant's first individual application, lodged in June 2022, had been pending for more than four years. The second individual application lodged by the applicant in October 2023 had also been pending for more than two years and nine months. Those time periods appeared manifestly excessive in the particular circumstances of the case. In the Court's opinion, the Constitutional Court's procedural inertia in examining the two individual applications in question had had the effect of reducing the protection afforded at domestic level to a theoretical and illusory right, offering the applicant at best only an uncertain prospect of redress and failing to satisfy the minimum requirements of promptness which a domestic remedy had to offer in order to be effective, thus proving incapable of succeeding in good time.

The Court concluded that, in the specific circumstances of the present case, the applicant could not be criticised for failing to await the outcome of a remedy where its effectiveness had been seriously compromised. This conclusion was strictly limited to the particular circumstances of the present case and could not be interpreted as calling into question, in general, the effectiveness of an individual application to the Constitutional Court within the domestic legal system.

Conclusion: preliminary objection dismissed (non-exhaustion of domestic remedies).

Articles 10 and 11:

(1) *Whether there had been an interference* – The Court considered that the criminal charges brought against the applicant, his detention in that context and his conviction in the proceedings against him, in so far as they were based on acts directly linked to his activity as a human-rights defender or his involvement in the Gezi Park events, had amounted to interference with the exercise of his rights to freedom of expression and freedom of peaceful assembly, guaranteed by Articles 10 and 11.

(2) *Whether the interference had been justified* – Article 312 of the Criminal provided that "[a]nyone who attempts to overthrow the Government of the Republic of Türkiye by force and violence or to prevent it, whether fully or in part, from discharging its duties shall be sentenced to aggravated life imprisonment". The Assize Court had not accused

the applicant of having personally committed acts of violence or of having caused material damage. Nor did it seek to establish whether the applicant had directly participated in the violence that occurred during the Gezi Park events or had called for such violence. It had held that he was criminally liable, finding that he had played a strategic role in the planning, coordination or leadership of the Gezi Park events, and that in the context of collective action, liability could extend to any person who had a decisive influence on how the events unfolded, or who had made an essential contribution to them.

The Assize Court had replaced examination of personally imputable acts with a global assessment of the applicant's conduct, finding that a combination of factors, not in themselves punishable and falling within the exercise of Convention rights — such as civil-society activities, lobbying, international contacts or organisational and financial support for non-violent demonstrations — was sufficient to make out the material element of the offence set out in Article 312 of the Criminal Code.

By equating lawful civil-society activities with the material elements of an exceptionally serious offence, the domestic courts' interpretation of Article 312 of the Criminal Code had led to an indirect attribution of criminal liability for acts of violence committed by third parties, in the absence of any direct participation, incitement or accommodation on the applicant's part. Such an approach, based primarily on the applicant's supposed influence or structural role within a social movement, without any examination of the origins of the violence or the individual responsibility of its perpetrators, had the effect of imposing a manifestly disproportionate criminal burden on civil-society actors and constituted an unacceptable interference with the freedoms guaranteed by the Convention.

Such an interpretation was, moreover, liable to have a particularly serious chilling effect on the exercise of the freedoms enshrined in Articles 10 and 11 of the Convention. The prospect of prosecution for an offence punishable by aggravated life imprisonment was likely to discourage not only human-rights defenders and civil-society actors, but also ordinary citizens, from taking part in, organising or providing logistical, financial or intellectual support for peaceful demonstrations. Applied to nationwide protest movements, such an interpretation entailed the risk of an *ex post facto* reclassification of the criminal law when sporadic violence occurred on the margins of gatherings, thus subordinating the exercise of the rights to freedom of expression and peaceful assembly to an obligation to maintain absolute public order, something that was incompatible with the Court's established case-law and liable to deprive Articles 10 and 11 of the Convention of their practical effect.

In the light of those considerations, the Court found that the manner in which Article 312 of the Criminal Code had been interpreted in the present case in relation to the acts allegedly committed by the applicant during the Gezi Park events had had the effect of extending the scope of that provision in an unforeseeable manner, had not afforded the requisite minimum protection against arbitrary interference and could not therefore be regarded as being "prescribed by law".

Conclusion: violation (fifteen votes to two).

Article 6 § 1:

With regard to the reasoning of the national courts: despite the reference to a body of evidence, the domestic decisions did not explain how these elements established a concrete link between the applicant's activities and the violence which had occurred during the Gezi Park events. The absence of a "cause-and-effect" analysis, even though the offence presupposed the use of force and violence, was a major shortcoming. This was in addition to the refusal, justified in a stereotyped manner, to hear key witnesses

requested by the defence, without adequate procedural counterbalancing or an effective review on appeal and by the Court of Cassation, as the higher courts had merely endorsed the first-instance findings without addressing the key complaints.

Lastly, the conviction had been based on largely contextual and insufficiently individualised inferences, placing the burden on the accused to refute general hypotheses rather than obliging the authorities to establish, beyond reasonable doubt, the material and intentional elements of the offence. Such an approach raised serious questions as to the overall fairness of the proceedings.

The Court therefore considered that in the present case the questions relating to the application of domestic law went beyond the assessment of the applicant's individual criminal liability or the establishment of *corpus delicti*, matters which in principle fell within the jurisdiction of the national courts. It emphasised the importance of establishing a clear distinction between assessment of the facts and evidence, which was a matter for the domestic courts, and supervision of compliance with the rights and freedoms guaranteed by the Convention, which was a matter for its own assessment. It transpired from the reasoning of the domestic courts that the applicant had been convicted on the basis of facts relating to his exercise of freedoms guaranteed by the Convention and falling outside the scope of the criminal provision in question, without an attempt to identify or legally establish his specific individual criminal liability in the light of the constituent elements of the offence. Thus, the domestic courts had applied an arbitrary and unforeseeable interpretation of the criminal law, to the applicant's detriment, leading to a manifestly unreasonable outcome of the trial.

With regard to the independence and impartiality of the bench responsible for the case, several converging elements were such as to give rise to legitimate doubts on the part of an objective external observer in this respect.

These doubts followed directly from the Court's findings in the [Kavala v. Turkey](#) judgment concerning the violation of Article 18 of the Convention taken in conjunction with Article 5 § 1. In this connection, the opening of a disciplinary investigation against the judges who had acquitted the applicant in February 2020 had been, by its very nature, liable to exert dissuasive pressure on the judges concerned and, more broadly, to undermine judicial independence in the subsequent conduct of the proceedings.

Those doubts were strengthened by the repeated remittals of the applicant's case from one court to another and the participation, at the decisive stage of the trial, of a judge with close previous links to the ruling party. In a context marked by repeated public pronouncements by members of the executive, portraying the applicant as guilty before any final decision had been delivered, the inadequate examination of the defence arguments and the absence of institutional safeguards capable of dispelling any appearance of bias assumed particular importance. Those factors had to be assessed in the light of a wider context of structural shortcomings affecting the independence of the judiciary in Türkiye, which had already been noted by the Court and other Council of Europe bodies, with regard, *inter alia*, to mechanisms for the appointment, transfer and discipline of judges, and the repeated failure to execute the Constitutional Court's judgments.

In view of those considerations, the Court concluded that there had been serious shortcomings in the criminal proceedings against the applicant, affecting both the fairness of the proceedings and the guarantees of the independence and impartiality of the courts. Having regard, more widely, to a structural context undermining the independence of the justice system in Türkiye, the Court considered that the shortcomings identified in the present case were not mere procedural flaws, but that they reflected a profound deterioration in the judicial context in which the applicant's case had been examined. Taken as a whole, those shortcomings had fundamentally

impaired the very essence of the applicant's right to a fair trial, as guaranteed by Article 6 § 1 of the Convention.

Conclusion: violation (fifteen votes to two).

Article 5 § 1:

The Court considered that the applicant's pre-trial detention between 10 December 2019 and 25 April 2022 had been arbitrary, in that it was not based on reasonable suspicions and did not pursue any of the legitimate aims listed by the Convention. The findings of the [Kavala v. Turkey](#) judgment remained relevant in assessing the lawfulness under Article 5 § 1 of the applicant's subsequent detention, on the basis of the same evidence that had been found insufficient, under different criminal classifications (Article 309, then Article 328 of the Criminal Code), without any substantively new fact having been established, as the Court had held in the [Kavala v. Türkiye \(infringement proceedings\) \[GC\]](#) judgment. The authorities had acted in bad faith, seeking substitute grounds in order to ensure the applicant's continued detention and to circumvent the requirements of domestic law, particularly those arising from Article 100 of the Code of Criminal Procedure, which required them to envisage alternative measures.

The Court considered that the applicant's detention after his conviction on 25 April 2022, based on the execution of a sentence imposed following proceedings in which there had been a flagrant denial of justice, could not be regarded as "lawful". It stemmed directly from a conviction judgment that had been incompatible with the fundamental guarantees of a fair trial, which meant that the ensuing deprivation of liberty had no permissible legal basis under the Convention.

In the light of those considerations, the Court concluded that the entirety of the applicant's deprivation of liberty since 10 December 2019 had been incompatible with the requirements of Article 5 § 1.

Conclusion: violation (fifteen votes to two).

Article 18 taken together with Articles 5 § 1, 6 § 1, 10 and 11:

The Court referred to its conclusions under Articles 10 and 11, Article 6 § 1 and Article 5 § 1.

The Court emphasised that the present case was part of a general context noted in previous cases concerning other political opponents, human-rights defenders and journalists who had been detained and charged to a large extent with clearly exaggerated criminal offences. Having regard to all the information in its possession, the Court considered that it could be established beyond any reasonable doubt that the evidence required under its case-law to ascertain that the measures taken by the national authorities had been genuinely motivated by an ulterior motive followed from a combined assessment of the relevant case-specific facts and contextual factors.

First, an assessment under Article 18 of the applicant's detention after 10 December 2019 could not be dissociated from the conclusions in the [Kavala v. Turkey](#) judgment in respect of his initial detention, which had been held to be in breach of Article 18 taken together with Article 5 § 1, in the absence of reasonable suspicion against the applicant and the existence of an ulterior purpose, consisting in silencing him and dissuading civil-society actors. The subsequent criminal proceedings had not provided any new, concrete and tangible evidence capable of dispelling the concerns expressed by the Court as to the real purpose of the criminal prosecution.

Secondly, the applicant's conviction was based on inferences that were largely contextual and insufficiently individualised, placing the onus on the applicant to refute general hypotheses rather than requiring the authorities to demonstrate, beyond all reasonable doubt, the material and mental elements of the offence. There were also converging elements capable of giving rise to legitimate doubts on the part of an objective external observer as to the independence and impartiality of the courts which had examined the case.

Thirdly, the repeated public statements concerning the applicant's guilt, made by the highest State authorities well before the conclusion of the proceedings, had contributed to creating an environment of political and media pressure that was capable of affecting both the appearance and the reality of independence and impartiality on the part of the courts dealing with the case.

Fourthly, as the Court had noted in the [Kavala v. Turkey](#) judgment, the investigating authorities had not sought to establish the applicant's actual involvement in acts of violence linked to the Gezi Park events or the attempted *coup d'état*. The investigative approach throughout the proceedings had been confirmed at the trial stage, when the domestic courts, in showing that the offence had been made out, had accepted acts that were essentially related to the applicant's civic, associative and political activities, rather than individualised acts of violence. The use of such evidence as a basis for a criminal conviction showed that the prosecution had not been primarily aimed at penalising acts of violence, but had, in substance, been aimed at punishment, and at dissuading from the exercise of activities which had related to public debate and participation in civil society.

Thus, all of those circumstances showed that the measures taken by the authorities had pursued an ulterior purpose, namely the stifling of pluralism and limiting freedom of political debate, which was at the very core of the concept of a democratic society and of European public order.

The Court had therefore to ascertain whether this ulterior purpose had been the predominant purpose of the measures in question. In this respect, the applicant's situation was one of exceptional gravity and was highly emblematic. It was distinguished both by the duration and intensity of the interference with the applicant's fundamental rights and by implications which went far beyond his individual situation. The applicant's prolonged deprivation of liberty, which had continued despite an acquittal judgment at the domestic level and two legally binding judgments in which the Court had found serious violations, disclosed a particularly serious challenge to the essential guarantees inherent in the principle of the rule of law.

The case pointed to an instrumentalisation of the criminal law by means of successive sets of proceedings, legal reclassifications and repeated detentions, the effect of which was to circumvent the fundamental procedural guarantees and to neutralise the authority of judicial decisions, at both domestic and international level.

Having regard to all the circumstances of the case, the Court considered it established that the measures taken against the applicant (the bringing of criminal proceedings, his continued pre-trial detention and his conviction) had been predominantly motivated by an ulterior purpose, namely, on the one hand, to punish him for his role in the Gezi Park demonstrations and for expressing his opinions as a human-rights defender, and, on the other, to silence him.

Conclusion: violation (fifteen votes to two).

Article 3 (substantive):

The applicant's sentence was based on Article 312 of the Criminal Code, which punished offences against the constitutional order; those were among the offences for which application of the mechanisms for conditional release and limitation on the enforcement of sentences was ruled out. It followed that the applicant was deprived of any prospect of release and that there was no domestic mechanism allowing for review of the sentence in the light of changes in his personal situation or the degree of danger posed by him. In those circumstances, the Court reiterated that the incompatibility with Article 3 on this ground already arose at the moment of imposition of the whole-life sentence and not at a later stage of incarceration.

Conclusion: violation (fifteen votes to two).

Article 46:

With regard to individual measures, the Court considered that the respondent State was required to secure the applicant's release at the earliest possible date.

The Court also emphasised that the applicant's criminal conviction ought to be regarded, under Convention law, as null and void. The domestic law provided, where a final Court judgment found a violation of the Convention, a mechanism for the reopening of proceedings capable of erasing the effects of the conviction. In those circumstances, it was incumbent on the respondent State to put in place, as soon as possible, all appropriate measures in order to eliminate the consequences of the applicant's conviction and to remedy, in an effective manner, the violations found.

With regard to general measures, the Court considered that the present case was a particularly revealing illustration of a systemic problem, which was part of a wider context characterised by the detention and prosecution of political opponents, human-rights defenders and journalists on the basis of criminal offences, the scope of which was in many cases interpreted extensively or artificially magnified. The violations found in the present case also revealed structural shortcomings which affected the guarantees of independence and impartiality of the judiciary, and which were likely to facilitate the exertion of direct or indirect influence by the executive branch on certain judicial decisions, particularly in cases with a sensitive political dimension.

In this context, the Court considered it essential to strengthen the institutional safeguards capable of preventing the exerting of undue pressure, particularly by tightening up the mechanisms for appointing, assigning and disciplining judges, by consolidating the statutory guarantees relating to their security of tenure and by ensuring effective compliance with the decisions of the higher courts.

The Court also stressed the need to prevent any instrumentalisation of criminal proceedings for purposes other than the impartial administration of justice. In this respect, it noted that the excessive use of pre-trial detention, the use of extensive criminal classifications and the opening of successive prosecutions could reflect a misuse of the State's "machinery of repression". Such a practice necessitated the introduction of effective procedural safeguards, capable of ensuring that criminal prosecutions were initiated and conducted in strict compliance with the principles of legality, necessity and proportionality, and that they could not be used as a means of exerting pressure or neutralising the exercise of fundamental rights.

The Court emphasised that full compliance with the Constitutional Court's judgments was essential to the rule of law. In this connection, it reiterated that the failure to execute that court's judgments was likely to undermine the effectiveness of the individual application procedure, while compromising the constitutional order by depriving applicants of the effective application of their recognised rights. Furthermore, Article 46 of the Convention placed a legally binding obligation on the States Parties to abide by

the final judgments of this Court, which implied their full, effective and prompt execution. In this context, it seemed difficult to reconcile this requirement with the failure to grant priority at the domestic level to infringement proceedings in respect of the execution of a judgment by this Court, given that such a situation is likely to prolong and exacerbate the breach of fundamental rights already found.

The present case disclosed the existence of another problem, concerning the execution of irreducible life sentences, in the absence of a mechanism guaranteeing a genuine prospect of conditional release. This question, which appeared to be systemic in nature, remained under the supervision of the Committee of Ministers. It was accordingly for the respondent State to remedy this situation by instituting, through the adoption of appropriate legislative measures, a procedure that was in keeping with the principles established by the Grand Chamber in the *Vinter and Others v. the United Kingdom* [GC] judgment.

Article 41: EUR 70,000 in respect of non-pecuniary damage.

(See *Vinter and Others v. the United Kingdom* [GC], 66069/09 et al., 9 July 2013, [Legal Summary](#); *Kavala v. Turkey*, 28749/18, 10 December 2019, [Legal Summary](#); *Kavala v. Türkiye* (infringement proceedings) [GC], 28749/18, 11 July 2022, [Legal Summary](#))

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