Third Party Intervention

In the Case of Mehmet Osman KAVALA v. Türkiye (no. 2), no. 2170/24, by

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An independent non-governmental organization specialized in defending and promoting freedom of expression

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I. Introduction

1. İFÖD will address the issue of foreseeability of crimes and punishments in its intervention in the case of *Mehmet Osman KAVALA v. Türkiye (no. 2)*, (no. 2170/24). This issue arises in the context of the criminal proceedings that resulted in the applicant being sentenced to aggravated life imprisonment. According to the Court's communication, the applicant was convicted under article 312 of the Turkish Criminal Code ("TCC") and sentenced to aggravated life imprisonment. The applicant alleges violations of Articles 5 §§ 1 and 4; Articles 6 §§ 1, 2 and 3 (d); Article 7; Articles 10 and 11 as well as Article 18 in connection with Articles 6, 7, 10 and 11 of the Convention. Lastly, the applicant raises concerns about violations of Article 3 of the Convention on two grounds.

2. The Court posed 12 separate questions to the parties. Notably, in question 9, the Court asked whether the offence of attempting "by force and violence to overthrow the Government of the Republic of Türkiye or to prevent it partially or totally from exercising its functions" as defined under article 312 of the TCC, was articulated with sufficient clarity and foreseeability under Article 7 of the Convention, to allow the applicant to know in advance that his conduct was reprehensible. The Court also asked whether the acts for which the applicant was convicted constitute an offence within the meaning of Article 7 of the Convention. Additionally, the Court asked about the material and moral elements of the offence. Finally, the Court asked whether the principle of *nullum crimen sine lege* had been restricted for purposes other than those envisaged by Article 7 in violation of Article 18.

3. The Court previously examined the evidence against the applicant in the *Kavala* judgment of 10.12.2019 finding violations of Articles 5 §§ 1 and 4 and Article 18 in conjunction with Article 5 § 1. The Court determined that the applicant's pre-trial detention was not justified by "reasonable suspicion" but was based primarily on facts related to the exercise of treaty rights and/or routine activities of a human rights defender. The Court concluded that the deprivation of liberty pursued the ulterior purpose of silencing the applicant. Additionally, under Article 46, the Court held that the respondent State was obliged to take all necessary measures to end Mr. Kavala's detention and arrange for his immediate release.[1]

4. Since Mr. Kavala was not released, the Committee of Ministers referred the matter to the European Court of Human Rights. In its judgment resulting from infringement proceedings,[2] the Court found Türkiye's measures did not demonstrate "good faith" in complying with the conclusions and spirit of the *Kavala* judgment. The Court concluded that the State had failed to act in a manner that would effectively protect the Convention rights that had been violated. Thus, it ruled that the Turkish Republic had not fulfilled its obligation under Article 46 § 1 to comply with the initial judgment.

5. In the *Kavala* judgment, the Court concluded that, in the absence of facts, information or evidence showing the applicant's involvement in criminal activity, he could not reasonably be suspected of attempting to overthrow the Government under article 312 of the TCC. Specifically, the Court found the facts insufficient to raise suspicions that the applicant had sought to organise and fund an insurrection against the Government through force and violence, which are the essential elements of the offence under article 312 of the TCC (§§

[1] *Kavala v. Türkiye,* no. 28749/18, 10.12.2019.
[2] *Kavala v. Türkiye* (Proceedings under Article 46 § 4)) [GC], no. 28749/18, 11.07.2022.

153-154). The Court also noted that no specific facts or information justifying the applicant's initial and continued detention under this charge were presented or produced during the pre-trial proceedings. Furthermore, the other evidence cited in the indictment was not shown to constitute such facts or information.

6. In this context, the critical point of the current application is the evaluation of the same acts previously examined by the European Court, now in the context of the applicant's finalised conviction, under the principle of *nullum crimen sine lege.*

7. İFÖD argues that the scope of the offence regulated under article 312 of the TCC is so broad that its content, along with the way it is interpreted by domestic courts, does not provide sufficient protection against arbitrary interference by national authorities.

8. In its third-party intervention, İFÖD will address two legal questions:

   a. Whether, in a case where the European Court has ruled that there was a violation of the right to liberty, national authorities can convict a person based on the same activities for the same offence without contradicting the European Court's judgment;

   b. Whether the offence of attempting to overthrow the government, as defined in article 312 of the TCC and forming the basis for the applicant's conviction, is compatible with the principle of *nullum crimen sine lege,* considering the Court's findings in the *Kavala* judgment and the domestic courts' application of this article in other cases.

9. To clarify these two important issues, İFÖD will provide the Court with detailed information regarding the interpretation and application of article 312 of the TCC by Turkish judicial authorities. In this context, İFÖD will focus on the specific aspects of the article, particularly the material and mental elements of the offence. Additionally, the current interpretation and application of this offence will be analyzed in light of the Court's case-law on the exercise of freedom of expression and assembly. İFÖD believes that the crime defined under article 312 requires a thorough examination by the Court, especially considering its impact on freedom of expression and assembly in Türkiye. Therefore, İFÖD's submission will be **address the interrelated questions 9, 10 and 11** as formulated by the European Court in its communication to the Government.

II. The Court's Findings in Kavala Case

10. In the first *Kavala* case, which concerned the applicant's pre-trial detention, the Court found violations of Article 5(1) and (3) and Article 18 in conjunction with Article 5 of the Convention. The Court ruled that there were no specific facts or information to justify the applicant's initial and continued pre-trial detention under Articles 309 and 312 of the TCC. In reaching this conclusion, the Court noted that during the applicant's police interrogation, he was not questioned about his potential involvement in the violence during the Gezi protests.
11. The Court also observed that there was no evidence in the case file, nor in the decisions on the applicant's detention or indictment, indicating that he had used force or violence, instigated or led acts of violence, or supported such criminal activities. Furthermore, although the judge's detention order of 01.11.2017 referred to "concrete evidence," it did not present any material that would lead an objective observer to believe there was

reasonable suspicion that the applicant had participated in or supported such acts. Subsequent orders extending the applicant's detention similarly failed to reference such material evidence.

12. The Court emphasized that this absence of evidence was crucial to the case, as one key aspect of the *actus reus* constituting the offence under article 312 of the TCC was the use of "force" or "violence" to overthrow the Government (§ 143).

13. The Court also examined the evidence presented in the indictment. The prosecution portrayed the Gezi events as orchestrated by a group of influential civil society figures acting behind the scenes. According to the prosecutor, this group formed a "*sui generis* structure" in Türkiye, led by the applicant and supported by foreign actors, notably an American businessman. The prosecution alleged that the applicant led this criminal association by secretly coordinating various civil society actors to plan and initiate an uprising against the government.

14. Based on this narrative, the prosecution listed several actions purportedly carried out by this "*sui generis* structure," linking them, in an unverifiable manner, to the alleged criminal objective of attempting to overthrow the Government through force and violence. However, the facts attributed to the applicant —forming the basis of the questions during his interrogation and the charges brought against him— comprised legal activities, isolated acts that appeared unrelated, or actions clearly connected to the exercise of a Convention right. Crucially, all of these activities were non-violent activities (§§ 145-146).

15. The Court evaluated whether the following evidence justified the applicant's detention: testimony from witness M.P.; several telephone conversations the applicant had during or after the Gezi events with journalists, the founder of a publishing house, individuals who organising cultural activities, and leaders of NGOs; various telephone conversations with third parties after the Gezi events; meetings between the applicant and NGO leaders, journalists and representatives of foreign countries during the Gezi events; discussions in which the applicant participated in preparation for a visit by a delegation from the EUTCC, in 2017, which occurred well after the Gezi events and the coup attempt; message exchanges between the applicant and various individuals on different topics; and the relationship between the applicant and H. J.B., an American academic (§ 147).

16. The Court concluded that there were no specific facts or information to justify the applicant's initial and continued pre-trial detention under articles 309 and 312 of the TCC (§§152-155). The suspicion of attempting to overthrow the constitutional order by force and violence as required by the article 309 of the TCC (§ 155), must be based on concrete and verifiable facts or evidence. However, neither the initial detention order nor the subsequent orders extending the applicant's detention contained such evidence. The Court found no link between the suspicions against the applicant and the elements presented as "evidence" in the investigation file that led to his detention. In fact, the majority of the evidence cited against Kavala was deemed irrelevant. Moreover, the Court concluded that the initial and continued pre-trial detention measures were "essentially based not only on facts which could not reasonably be regarded as conduct criminalised under domestic law, but also on facts largely related to the exercise of Convention rights" (§157).

17. Based on these conclusions, the Court held that there had been violations of Article 5(1), 5(3), 5(4) and 18 of the Convention. The Court determined that the extended detention of a human rights defender, was pursued with the ulterior purpose of silencing him.

Consequently, the Court found a violation of Article 18 of the Convention in connection with Article 5 (1) (see §224, 226, 228 and §§ 230- 232).

III. Developments After the Court's Kavala Judgment

18. After the European Court of Human Rights issued its *Kavala* judgment on 10.12.2019, a domestic court acquitted Mr. Kavala and eight co-defendants on 18.02.2020 of charges including "attempting through force to overthrow the government" under article 312 of the TCC. The court also ordered Mr. Kavala's release from detention. However, on the same day, the Istanbul public prosecutor prevented his release from Silivri Prison by issuing an immediate arrest warrant related to an ongoing investigation into Mr. Kavala's alleged involvement in the July 2016 coup attempt through his alleged connections with U.S. academic H.J.B.

19. On the basis of this new arrest warrant, Mr Kavala was re-arrested before being released from Silivri Prison and was subsequently detained on 18.02.2020 detained by the 8th Istanbul Criminal Judgeship of Peace, in connection with the same investigation from which he had been released on 11.10.2019. Since there was no new evidence in the investigation file, the second detention order was based on the same evidence already examined by the ECtHR.

20. On 22.01.2021, the 3rd Criminal Chamber of the Istanbul Regional Court of Appeals overturned the acquittal decision of the 30th Istanbul Criminal Assize Court related to the Gezi trial. At a hearing on 05.02.2021, which was then heard by the Istanbul 30th Criminal Assize Court. On 25.04.2022, the 13th Istanbul Criminal Assize Court acquitted the applicant of the charge of military or political espionage under article 328 of the TCC but found him guilty under article 312 of the TCC, sentencing him to aggravated life imprisonment.

21. On 28.12.2022, the 3rd Criminal Chamber of the Istanbul Regional Court of Appeals dismissed the applicant's appeal against the 25.04.2022 judgment. Subsequently, on 28.03.2023, the 3rd Criminal Chamber of the Court of Cassation definitively confirmed this judgment, making it final. None of the ruling courts, including the Court of Cassation, have taken the European Court of Human Rights' judgments in Mr. Kavala's case into consideration.

22. Throughout the trial process, no new evidence was added to the case file. As a result, the applicant's conviction and sentencing to aggravated life imprisonment were based on the same evidence that the European Court of Human Rights had already evaluated in the *Kavala* case.

23. Meanwhile, on 02.02.2022, the Committee of Ministers initiated infringement proceedings under Article 46 § 4 of the Convention. The Committee referred to the European Court the question of whether the Turkish Government had failed to fulfill its obligation under Article 46 § 1 to abide by the Court's judgment in *Kavala v. Turkey*.

24. To determine whether Türkiye had complied with the Court's judgment, the Court examined whether the new charges against the applicant were based on separate or new evidence or relied on essentially the same evidence that had already been reviewed by the Court. The new charge of military or political espionage against the applicant was based on

two main elements: the alleged relationship between Mr. Kavala and H.J.B., and the activities carried out by Mr. Kavala through his NGOs (*Kavala v. Türkiye* [GC] (Art. 46) n. 28749/18, § 163, 11.07.2022). The Court concluded that, although Mr. Kavala had been formally charged with a new offence, the facts cited in both the detention orders and the indictment were essentially identical to those already examined in the *Kavala* judgment.

25. The Court concluded that neither the decisions on Mr. Kavala's detention nor the indictment introduced any substantially new facts related to the constituent elements of the offence under article 328 of the TCC that could justify the new suspicion.

26. The Court also noted that the conviction of the applicant by the Court of First Instance on 25.04.2022 was based primarily on facts related to the Gezi Park events. These events had already been thoroughly examined in the Court's first judgment, where it found a clear lack of reasonable suspicion. Furthermore, the Court pointed out that its finding of a violation of Article 18, in conjunction with Article 5, in the *Kavala* judgment invalidated any further actions arising from the charges related to the Gezi Park events and the attempted coup (§§ 151, 172). As a result, the Court ruled that Türkiye had failed to fulfil its obligation under Article 46(1) to comply with the judgment in *Kavala v Turkey*.

27. Despite these findings of the Court in both the principal *Kavala* judgment and the infringement judgment, the domestic courts continued to detain Mr. Kavala and convicting and sentencing him to aggravated life imprisonment. The higher courts including the Court of Cassation upheld the sentence, making it final. It is therefore important to assess the impact of these judgments on on the fairness and essence of the trial in domestic courts, particularly considering their disregard for the European Court of Human Rights' rulings.

IV. The Impact of the *Kavala* Judgment on the Essence of Trial in Domestic Courts

28. According to Article 46 §1 of the Convention, High Contracting Parties are obligated to abide by the final judgment of the Court in any case to which they are parties. The Court emphasises that the entire structure of the Convention relies on the general assumption that public authorities in Contracting States will act in good faith. Therefore, the public authorities must implement judgments in a manner compatible with the "conclusions and spirit" of the judgment.

29. As highlighted in the *Yüksel Yalçınkaya* case ([GC], no.15669/20, § 418, 26.09.2023), Article 46 of the Convention holds constitutional authority in Türkiye under Article 90 § 5 of the Turkish Constitution. This provision states that international agreements duly put into effect have the force of law, and no appeal can be made to the Constitutional Court to challenge their constitutionality. Article 90 also stipulates that, in cases of conflict between international agreements concerning fundamental rights and freedoms and domestic laws, the provisions of the international agreements take precedence.

30. In a similar case, in *Ilgar Mamadov v. Azerbaijan* ((46§4) [GC] no. 15172/13, 29.05.2019), the Court ruled that a state's failure to lift or annul charges criticized as abusive by the Court, even if followed by a conviction, did not constitute *restitutio in integrum*—the restoration of the applicant's situation to what it would have been had the Convention not been violated. Specifically, convicting the applicant on the same grounds criticized in the

initial judgment, after failing to annul the charges, did not satisfy the requirement to restore the applicant's position as required by the Convention (§ 192).

31. In the case of *Kavala*, **this reasoning suggests that** Türkiye's actions—detaining and convicting Mr. Kavala despite the ECtHR's findings—**fail to fulfill** the obligation of *restitutio in integrum*. The Turkish courts' disregard of the *Kavala* judgment reflects a **violation of the Convention's core principles**, as the applicant has not been returned to the position he would have been in had the original violations not occurred. İFÖD is of the opinion that, **this failure undermines the essence of fair trials** in Türkiye's domestic courts, as **it contradicts the binding nature of international judgments** under both the Convention and Turkish constitutional law.

32. As noted, the Court in its infringement judgment explicitly stated that its finding of a violation of Article 18, read in conjunction with Article 5, in the *Kavala* judgment rendered any actions arising from the charges related to the Gezi Park events and the attempted coup legally void (§§ 151, 172). Despite these clear conclusions in both the the original *Kavala* case and the infringement judgment, the domestic courts in Türkiye proceeded to convict the applicant based on the same evidence already evaluated by the European Court in these cases. Furthermore, the domestic courts did not introduce any new evidence into the case file. In their rulings, the domestic courts **neither addressed the ECtHR's assessment of the evidence nor provided an explanation for disregarding the Court's findings**. This **failure to engage with or justify the exclusion of the ECtHR's conclusions** reflects a significant lack of consideration for the binding nature of international judgments and undermines the integrity of the legal process at the domestic level.

33. As the ECtHR emphasized in the *Yalçınkaya* judgment, under Article 90 of the Constitution, the failure of national courts to implement an ECtHR judgment, especially when there is a concrete finding of a violation based on legal procedural and substantive provisions constitutes a violation of the Constitution.This is because Article 90 establishes that international agreements concerning fundamental rights and freedoms take precedence over domestic law in the event of a conflict.

34. In practical terms, this means that when the ECtHR identifies a violation in its judgment, the legal basis for any crime or punishment derived from conflicting national provisions is nullified. The law in conflict with the ECtHR ruling can no longer serve as a valid basis for legal decisions, and **continued reliance on such provisions by domestic courts would violate both the Convention and the Turkish Constitution**. Thus, in the case of *Kavala*, the domestic courts' failure to implement the ECtHR's judgment not only contradicts international law but also undermines the constitutional order in Türkiye.

35. The İFÖD argues that the domestic courts' disregard of the European Court's findings, and the conviction of the applicant based on evidence already criticised by the Court, without any further assessment, constitutes not only a violation of Article 46, but also a violation of Article 7 of the Convention.

36. In recent times, Turkish judicial authorities have increasingly disregarded the judgments of the ECtHR.[3] The detention and conviction of individuals based on legal actions that have

[3] See most recently the judgment of the Kayseri 2nd Assize Court, in which it disregarded the European Court's Yüksel Yalçınkaya judgment and convicted the applicant again on 12.09.2024.

been criticized or deemed unjust by the ECtHR undermines the fundamental principles of the Convention and the values upheld by the Council of Europe.

37. As further elaborated below, the principle of legality of crimes and punishment is a cornerstone of the rule of law and is safeguarded under Article 7 of the Convention. When this principle is blatantly violated by a Contracting Party, it necessitates a swift and strong response from the Convention's institutions.

V. The Foreseeability of Article 312 of the Turkish Criminal Code

38. The principle of foreseeability is a key component of the legality principle, or *nullum crimen sine lege*, enshrined in Article 7 of the Convention. Article 7 states that "no-one shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when it was committed". In its recent *Yüksel Yalçınkaya* judgment, the Grand Chamber emphasized that this guarantee is fundamental element of the rule of law and occupies a prominent place in the Convention's system of protection. Notably, no derogation from this principle is permissible under Article 15, even in time of war or other public emergency. The Court underscored that Article 7 must be construed and applied to provide effective safeguards against arbitrary prosecution, conviction, and punishment (§ 237).

39. The Court also clarified that Article 7 is not limited to prohibiting the retroactive application of criminal law. It also encompasses the broader principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). Furthermore, criminal law must not be interpreted expansively to the detriment of the accused, such as by analogy. For an offence to be clearly defined in law, an individual must be able to determine, based on the wording of the relevant legal provision—and, if necessary, with the assistance of judicial interpretation—what acts or omissions could make them criminally liable. The concept of "law" in Article 7 includes qualitative requirements, notably those of accessibility and foreseeability (§ 238).

40. In relation to Article 7 of the Convention, the Court emphasized that the principle of *nullum crimen sine lege* requires that criminal acts be clearly defined by law in advance. However, Article 7 also mandates that these laws be applied in a foreseeable manner. Judicial interpretation is inevitable in any legal system, including criminal law, even when a legal provision is drafted with clarity. This is because there is often a need to clarify ambiguous points and adapt laws to evolving circumstances. Indeed, in Contracting States, the gradual development of criminal law through judicial interpretation is both accepted and necessary.

41. The Court clarified that Article 7 does not prohibit the progressive clarification of criminal liability through case-by-case judicial interpretation, as long as the resultant development remains consistent with the essence of the offence and is reasonably foreseeable. In other words, individuals must be able to anticipate which actions may constitute a crime, at least with the assistance of legal advice, based on established judicial interpretations. A lack of accessible and foreseeable judicial interpretation can lead to a violation of Article 7, as individuals may not be adequately informed about what actions are criminal (§ 239).

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https://www.dha.com.tr/gundem/aihmin-ihlal-karari-verdigi-feto-davasinda-yerel-mahkemeden-yine-ayni-karar-2504026

42. Therefore, for a law to be compatible with Article 7, it must not only be clear in its definition of crimes but also applied in a way that individuals can reasonably foresee its consequences.

43. The Court also emphasized the importance of the mental element, or *mens rea*, in the determination of criminal liability under Article 7 of the Convention. It noted that for a measure to be regarded as a penalty within the meaning of Article 7, the principle of accessibility and foreseeability requires the establishment of personal liability on the part of the offender. This means there must be a mental link—*mens rea*—that connects the offender's actions to the criminal conduct, thereby establishing their culpability. Article 7, therefore, necessitates that punishment be based on the existence of such a mental link that reflects the individual's liability for the offence they physically committed. While certain forms of objective liability, which rely on presumptions of liability, may exist, they must still comply with the Convention. Specifically, these presumptions cannot prevent an individual from exonerating themselves from the accusations. In other words, a presumption of liability should not be so rigid that it obstructs the possibility of proving innocence or lack of intent (§ 242). This requirement safeguards individuals from arbitrary punishments by ensuring that liability must be tied to their mental state and actions, in line with the fundamental principles of justice.

44. In this context, the foreseeability of article 312 of the Turkish Criminal Code must be critically assessed to ensure it meets these standards and does not leave individuals vulnerable to arbitrary legal interpretations.

45. Article 312 of the TCC regulates offences against the government and is classified among the crimes against the constitutional order and its functioning. The article stipulates the following:

> "Article 312. - (1) Anyone who attempts to overthrow the Government of the Republic of Turkey or partially or completely prevent it from performing its duties by using force and violence shall be sentenced to aggravated life imprisonment.
>
> (2) If, during the commission of this offence, other offences are committed, the punishment for these offences shall be imposed separately, in accordance with the relevant provisions."

46. According to the explanation of article 312, for the offence defined in this article to be established, there must be an attempt to alter the constitutional order by using force or violence. Therefore, force and violence are the key elements of this offence. The legal definitions and meanings of the terms "force" and "violence" are well understood and refer to the use of physical or coercive means to subvert or override the will of individuals. The severe penalty of aggravated life imprisonment reflects the gravity of these actions. The second paragraph ensures that if other criminal acts are committed in the process of this offence, they will be punished independently, ensuring accountability for each specific violation.

47. Although the explanation to the law states that the concepts of force and violence is clear, in practice the Court of Cassation introduced the concept called "moral force" in its Sledgehammer (*Balyoz*) ruling. The 9th Chamber of the Court of Cassation, in that case, interpreted "force/violence" broadly, stating that the offence could also be committed with moral force, provided it had a coercive and advantageous impact. The court explained that force should not always be understood narrowly as physical force but as actions that involve an unlawful will aimed at achieving unlawful ends through coercion, which could

potentially include moral or psychological pressure. This interpretation extended the definition of force to include actions that suggest a clear intent to use physical force, even if not immediately apparent.[4]

48. However, although it was stated in the Sledgehammer case that moral force may be adequate to meet the elements of this crime, the concept of "moral force" remains ambiguous. In the Sledgehammer case, where the defendants were senior military personnel with easy access to weapons and the ability to exert physical force, it was more plausible to assume that moral force could easily translate into physical force. Their potential access to military resources made the threat of force credible.

49. This raises a key question about the applicability of article 312 outside the context of military or armed activities: **Can civilians, through their speeches, non-violent and ordinary meetings, or organizational activities, be said to attempt to overthrow the government under article 312 of the TCC**? The extension of the concept of moral force to civilian actions is problematic at the very least, as civilians typically lack the same access to military power or physical force. Applying the concept of moral force to non-violent civilian actions could lead to an **overly broad interpretation of article 312**, potentially criminalizing legitimate forms of expression or assembly that fall under the protection of the Convention rights. Therefore, it remains questionable whether civilians could be considered to possess "moral force" under article 312 in a way that fulfills the offence's requirements of force and violence.

50. It is evident that if provisions such as article 312 of the TCC criminalize the exercise of rights protected under the European Convention, they would violate the principle of strict legality enshrined in Article 7 of the Convention. Both the European Court and other Council of Europe bodies have recently emphasized that the broad interpretation of criminal laws, particularly anti-terrorism laws, fails to meet the legality standard required by the Convention. Such vague provisions are often used to suppress dissent and target human rights defenders. These laws have led to the unjust detention and prosecution of thousands, including journalists, academics, and activists, on questionable terrorism charges.

51. The Council of Europe's Commissioner for Human Rights clearly highlighted this issue in her 2020 Country Report, stating:

> "However, the Commissioner notes that the problem is not limited to the mere wording of the laws and is determined to a large extent by the entrenched practice in the Turkish judiciary, as the extensive work of her Office, the case-law of the ECtHR and the opinions of the Venice Commission clearly show. This is also confirmed by the fact that numerous improvements in the wording of laws in recent years were offset by the judiciary, which kept using other criminal law provisions with exactly the same effects. In particular, the work of the Commissioner's Office on Turkey has consistently pointed to an overbroad interpretation by the Turkish judiciary of what constitutes terrorism or membership of an armed criminal organisation despite all the changes over the years."[5]

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4 9th Criminal Chamber of the Court of Cassation, E.: 2013/9110, K.: 2013/12351, T.: 09.10.2013.

5 Dunja Mijatovic, Report Following Her Visit To Turkey From 1 To 5 July 2019 (CommDH(2020)1) 2020, para. 36, available at: https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e

52. İFÖD observes that the excessively broad interpretation of article 312 of the TCC by Turkish judicial authorities undermines the principle of legality of crimes and punishment. In other words, a highly specific offence, which should ordinarily apply to a very limited number of cases, is interpreted with unprecedented breadth. Crimes such as those defined under article 312 of the TCC, which addresses serious acts like attempting to overthrow the government, are intended for narrowly defined circumstances. However, when such an offence is expansively interpreted, it undermines the principle of legality, rendering the scope of the crime vague and uncertain.

53. This broad interpretation risks criminalizing legal activities and the exercise of fundamental rights, such as freedom of expression and association, which should be protected under the Convention. The concern is that a rarely applicable crime is being used in a way that could unjustly encompass ordinary, lawful behaviour, leading to significant legal and human rights violations.

54. Punishing legal acts and the exercise of Convention rights not only violates Article 7 of the Convention but also infringes upon other rights such as freedom of expression and association. Therefore, the current case should be evaluated within this context, recognizing the broader implications of such legal practices.

VI. Conclusions

55. İFÖD submits that the Turkish judicial authorities' frequent disregard of the European Court's judgments has become a widespread practice[6] in Türkiye. In light of this, İFÖD contends that punishing an individual for acts already examined by the Court —where the Court found no reasonable suspicion—constitutes a violation of Article 7 of the Convention, in addition to a violation of Article 46, which obliges States to abide by the Court's judgments. This failure to comply with the Court's rulings reflects a broader erosion of legal protections in Türkiye and highlights a pattern of judicial overreach.

56. In this context, İFÖD argues that punishing an individual for acts already examined by the Court—where the Court found no reasonable suspicion—constitutes a direct violation of Article 7 of the European Convention on Human Rights, which enshrines the principle of legality and the prohibition of punishment without law. Moreover, such actions also breach Article 46, which obliges States to implement the Court's judgments in good faith.

57. Furthermore, İFÖD contends that the broad and vague interpretation and application of criminal law, particularly article 312 of the TCC, by the Turkish judiciary, lead to arbitrary punishment for legal acts and the exercise of Convention rights in violation of multiple Articles of the Convention, including those related to freedom of expression, association, and the principle of legality. The principle of legality, a cornerstone of the rule of law, is jeopardized when criminal laws are interpreted and applied in such an imprecise and arbitrary manner, creating a chilling effect on civil society and stifling dissent. This broad interpretation not only affects individuals directly involved but also has wider implications

[6] Among many examples, see: *Kavala v. Turkey*, no. 28769/18, 10.12.2019; *Selahattin Demirtaş (2) v. Turkey*, no. 14305/17, 22.12.2020; *Alparslan Altan v. Turkey,* no 12778/17, 16.04.2019; *Gurban v. Turkey,* no. 4947/04, 15.12.2015; *Vedat Şorli v. Turkey,* no. 42048/19, 19.11.2021 *Yüksel Yalçınkaya* v. Türkiye, ([GC], no.15669/20, 26.09.2023 .

for the protection of fundamental rights in Türkiye, weakening the safeguards established by the Convention and the Council of Europe.

58. Therefore, İFÖD urges the European Court to take these broader systemic issues into account when evaluating the current case. A ruling that reaffirms the importance of strict adherence to the principle of legality, as well as the necessity for judicial authorities to respect international judgments, is essential in curbing these ongoing violations and ensuring that Convention rights are upheld in Türkiye.

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