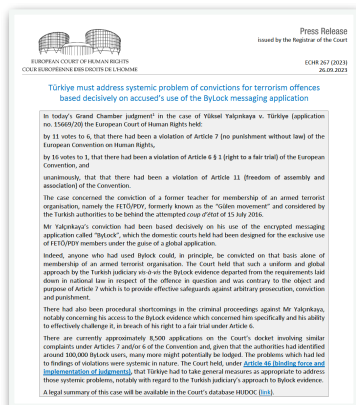


# Turkey's Human Rights Conundrum:

## The ECtHR's Judgments, National Responses, and the Call for Solidarity

As a Council of Europe member, Turkey's dedication to human rights and international law faces rigorous examination. Amid allegations and counter-allegations, Turkey faces a profound human rights challenge that extends beyond the Gülen movement to encompass a wide range of political opponents, activists, journalists, and civil society figures. This document delves into the crisis, spotlighting Turkey's systematic deviation from human rights norms.



### ECtHR's Landmark Judgment in "Yüksel Yalçınkaya v. Türkiye" and Its Far-reaching Implications

On September 26, 2023, in a pivotal Grand Chamber judgment, the European Court of Human Rights delivered a judgment in the case "Yüksel Yalçınkaya v. Türkiye", application no. 15669/20. This ruling serves as a monumental critique of Turkey's approach to certain terror convictions.

- **Violation of Article 7 (No Punishment Without Law):** By a margin of 11 votes to 6, the court determined that basing convictions for terrorism offenses decisively on the accused's utilization of the ByLock messaging application, which was considered an exclusive tool for Gülen movement (which is designated as FETÖ/PDY by the Turkish government) members, deviated from the prerequisites established in Turkish national law. This approach contradicted the essence and intent of Article 7, which is conceived to ensure protection against unpredictable prosecution, conviction, and sentencing.
- **Violation of Article 6 § 1 (Right to a Fair Trial):** An overwhelming majority, 16 votes to 1, concluded that the criminal proceedings against

Mr. Yalçinkaya bore procedural flaws, especially regarding his access to the specific ByLock evidence implicating him. The court underscored his inhibited capability to meaningfully challenge this evidence, which inherently violated his entitlement to a just trial as enshrined in Article 6.

- **Violation of Article 11 (Freedom of Assembly and Association):** The court's unanimous judgment highlighted an infringement of the freedom of assembly and association. This underscored a broader pattern of suppressing civil liberties, particularly in the context of perceived affiliations with groups like the Gülen movement.

Beyond the immediate case of Mr. Yalçinkaya, the judgment draws attention to a systemic crisis. Approximately 8,500 applications mirror the grievances raised under Articles 7 and/or 6, stemming from Turkey's stance on membership of a terrorist organisation. Given the accusation of nearly 100,000 people with the same evidences by Turkish authorities, the potential surge in similar complaints looms large. Recognizing this, the court, under Article 46, decreed that Turkey is obligated to implement broad measures addressing these endemic issues, especially in re-evaluating the judiciary's approach to the evidences of alleged membership of a terrorist organisation.

The ramifications of this judgment extend far beyond Mr. Yalçinkaya's individual circumstances, spotlighting broader, systemic issues in Turkey's judiciary and legal framework. It acts as both an indictment and an imperative for remedial action.

For a more detailed understanding and further resources on this judgment:

- Press release (<https://hudoc.echr.coe.int/eng-press?i=003-7756172-10739780>)
- Delivery of the decision ([http://tv.coe.int/ECHR/video.php?v=230926\\_DJ\\_GC\\_Yuksel-Yalcinkaya\\_Turkiye](http://tv.coe.int/ECHR/video.php?v=230926_DJ_GC_Yuksel-Yalcinkaya_Turkiye))
- Webcast of the hearing (18/01/2023) (<https://www.echr.coe.int/web/echr/w/yalcinkaya-v.-türkiye-no.-15669/20->)

## Analyzing the Spectrum of Responses to the ECtHR's "Yüksel Yalçınkaya v. Türkiye" Judgment

The landmark decision of the ECtHR concerning the case "Yüksel Yalçınkaya v. Türkiye" has catalyzed varied responses from the corridors of power in Turkey to the broader public. Following the ECtHR's judgment, various Turkish authorities, including the Justice Minister Yılmaz Tunç, President Recep Tayyip Erdoğan, and Constitutional Court President Zühtü Arslan, expressed dissent and criticized the court's decision.

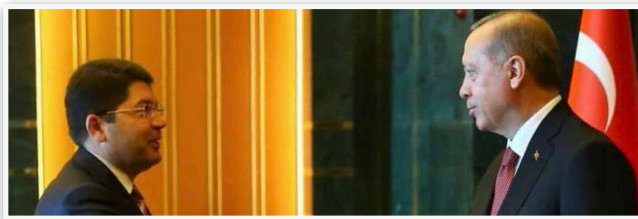
These officials contended that the ECtHR had overstepped its jurisdiction, with arguments suggesting that Turkish courts at all levels had deemed the evidence against the individual sufficient. President Erdoğan went further, implying a bias on the part of the ECtHR by suggesting they were aligned with terrorist organizations. Such statements from high-ranking Turkish officials challenge the authority and impartiality of the ECtHR, a pivotal institution in the European human rights system. By publicly dismissing and undermining the court's judgment, these statements risk violating Turkey's obligations under the European Convention on Human Rights.

### Concerns Over the ECtHR's Jurisdiction: Turkish Justice Minister Yılmaz Tunç

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Date: 26/09/2023

Source: <https://twitter.com/yilmaztunc/status/1706691787002191985>



Justice Minister Yılmaz Tunç expressed concerns that the ECtHR overstepped its jurisdiction by examining and making judgments on the evidence in a case where various levels of the Turkish judiciary deemed the evidence sufficient. He emphasized that the ECtHR is not a court of appeal and highlighted perceived inconsistencies in the Court's approach, especially regarding 'FETÖ' trials. He also insinuated a lack of impartiality in the ECtHR's trial process.

## Erdoğan's Stance: President Recep Tayyip Erdoğan

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Date: 01.10.2023

Source: <https://kronos36.news/tr/aihmin-yalcinkaya-kararina-erdogandan-tepki-bu-karardan-ekmek-cikmaz/>

President Erdoğan critically addressed the ECtHR's decision, suggesting an alignment between the Court and terrorist organizations. He reiterated Turkey's commitment to combating terrorism and voiced his opinion that the ECtHR's decision would neither deter nor influence Turkey's stance against 'FETÖ' members.



## The Constitutional Court's Viewpoint: Constitutional Court (AYM) President Zühtü Arslan

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Date: 01.10.2023

Source: <https://www.evrensel.net/haber/500219/aym-baskani-zuhtu-arslan-aihm-kararina-katilmiyoruz>



President Zühtü Arslan of the Constitutional Court clarified that they did not agree with the ECtHR's decision, reminding that the Constitutional Court's stance on the issue was already established. He underlined the sovereignty of the national judiciary and stated that the final say on such matters will be determined by courts within Turkey.

## The Osman Kavala Judgment and its Implications



While the case against Osman Kavala, a prominent philanthropist and civil rights activist, was still ongoing, the European Court of Human Rights (ECtHR) Grand Chamber delivered a pivotal judgment, declaring that Kavala's rights had been violated. The Court particularly emphasized the prolonged nature of his detention without a clear justification and his rights to a fair trial.

Contrary to the expectations of many, the Turkish judicial system did not adhere to the ECtHR's judgment. On April 25, 2022, the Istanbul 13th High Criminal Court issued its verdict, a decision that would later be reviewed by the Court of Cassation. Kavala, "cebir ve şiddet kullanarak Türkiye Cumhuriyeti Hükümeti'ni ortadan kaldırmaya teşebbüs" suçundan ağırlaştırılmış müebbet hapis cezasına çarptırıldı. Come September 28, 2023, the 3rd Criminal Chamber of the Court of Cassation

completed its review and upheld the verdicts against five defendants, including Osman Kavala.

The Council of Europe (CoE) Committee of Ministers, a vital body overseeing the enforcement of the ECtHR's judgments, had already been vocal about Turkey's non-implementation of the Kavala verdict. They had specifically called for Kavala's immediate release. The recent decision by the Court of Cassation only served to deepen the rift between Turkey and the European human rights bodies.

This decision, especially arriving just two days after the notable Yalçınkaya verdict, was perceived by many observers as a challenge and potentially a rebuff to the ECtHR's previous rulings. The timing raised eyebrows and intensified the scrutiny on Turkey's commitment to human rights and international legal obligations.

## Police Operations After the ECtHR's "Yüksel Yalçinkaya v. Türkiye" Judgment

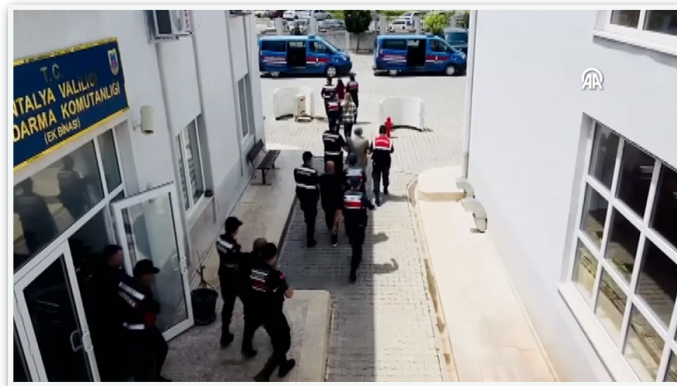
In the wake of the ECtHR's Yalçinkaya judgment, a series of police operations across Turkey targeted individuals allegedly linked to the Gülen movement. The apprehension of financial supporters, the arrest of parents leaving children in distress, and the detention of couples attempting to leave the country, paint a disconcerting picture of intensified crackdowns. These operations, notably occurring shortly after the court's judgment, could be interpreted as Turkey's direct defiance of the court's decision. The rapid and broad nature of these operations suggests that Turkish authorities might be signaling their unwillingness to adhere to the judgment, thereby challenging the authority of international human rights institutions. Instead of ensuring the protection of human rights post-judgment, these operations hint at a potential deepening of the human rights crisis in the country, placing individuals at further risk and emphasizing the urgency for international intervention.

### Large-scale Operations in Antalya:

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Date: 29.09.2023

Source: <https://www.aa.com.tr/tr/gundem/antalya-merkezli-11-ilde-transfer-operasyonu/3003565>



Interior Minister Ali Yerlikaya reported that 52 individuals, suspected of providing financial aid to arrested and convicted Gülen movement members, were apprehended in a large-scale operation that spanned 11 provinces with Antalya at its center. Yerlikaya pledged to continue the nation's resolute

battle against 'FETÖ' and lauded the efforts of the gendarmerie forces.

## The Arrest of Parents Leaving Quintuplets Orphaned:

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Dates: 01.10.2023 & 15.10.2023,

Sources: Initial Report - <https://www.tr724.com/besizlerin-anne-ve-babasini-tutukladilar-cocuklar-ortada-kaldi/>, Follow-Up - <https://www.tr724.com/besizlerin-ablasi-konustu-cadirda-yasiyoruz-lutfen-anne-ve-babamizi-tahliye-edin/>

A state of emergency decree couple, Abdülkadir and Nurcan Arslan, were arrested, leaving behind their seven-year-old quintuplets and a 13-year-old child. The children's plight, shifting from a police station to residing in a tent an earthquake, garnered national attention when it was highlighted by Green Left Party Kocaeli MP Ömer Faruk Gergerlioğlu. The elder sister of the quintuplets shared a poignant video pleading for her parents' release.



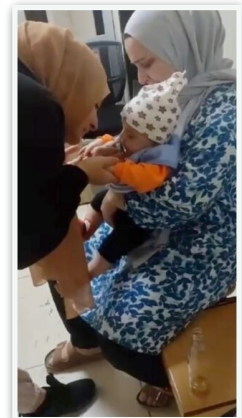
## Detainment of Parents with a 3-month-old Infant:

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Date: 8.10.2023

Source: <https://kronos36.news/tr/tutuklanan-anne-ve-babasi-enis-bebege-boyle-veda-etti/>

Late in the evening, Sümeyye Tercanlioğlu and her spouse, Zarif Tercanlioğlu, were arrested in Edirne as they allegedly attempted to cross over to Greece. Their infant, Enis, was left to be cared for by his aunt. Distressing visuals emerged, depicting Sümeyye navigating the courthouse with her infant under gendarmerie escort, followed by a heart-wrenching farewell. The couple's past encounters with the law, based on allegations connected to the Gülen movement, were brought back into the spotlight.



## Unprecedented Crackdown on the Gülen Movement:

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Date: 24.10.2023

Source: Twitter Post by Ali Yerlikaya (<https://twitter.com/AliYerlikaya/status/1716736507128500236>)



On October 24, 2023, Minister of Interior Ali Yerlikaya announced one of the most sweeping police actions in recent times, targeting members of the Gülen movement across 77 provinces in Turkey. This move is seen by many as a significant escalation in the Turkish government's ongoing campaign against the movement.

The operation, dubbed 'KISKAÇ', involved a coordinated sweep between various Turkish intelligence and security departments. The following key points were shared by the Minister:

- 611 suspects were apprehended.
- Operations spanned across numerous provinces, from Ankara to Zonguldak.
- The individuals targeted were accused of a range of activities, many of which, critics argue, fall within the purview of legitimate civic engagement, such as tutoring, educational counseling, and financial transactions.

Yerlikaya's statement underscored a narrative perpetuated by the regime, attributing a series of crimes to the Gülen movement, such as the alleged theft of exam questions. However, skeptics and human rights organizations continue to question the veracity of these claims and view them as pretexts to justify the ongoing crackdown.





This recent operation raises significant concerns. While framed by the government as a step to ensure national security, the vastness and urgency of the clampdown hint at the potential for gross human rights violations. Especially in light of past operations post the ECtHR's Yalçinkaya judgment, such aggressive measures against the Gülen movement might be interpreted as the Turkish government's continued disregard for international human rights norms.

The sheer scale of this operation, and its occurrence shortly after other similarly targeted actions, underscores the urgency for international monitoring and intervention to uphold human rights in the country.

## Call to Action: Upholding Human Rights in Turkey

The international landscape, now more than ever, has a pivotal role to play in ensuring that countries like Turkey remain committed to the tenets of human rights. With the current scenarios unfolding in Turkey, the global community should take the following concrete steps:

### Insist on Accountability:

The global community must be unequivocal in its demand for Turkey to abide by its international commitments and treaties. The nation's deviation from internationally agreed-upon standards should not be treated lightly.

### Employ Diplomatic Leverage and Sanctions:

Beyond mere rhetoric, tangible actions in the form of targeted sanctions can be an effective tool. The international community should also employ its diplomatic channels to emphasize the gravity of the situation and its potential ramifications on bilateral and multilateral relations.

### Champion Human Rights and Justice:

The global narrative should consistently stress the primacy of human rights and justice. By doing so, it can set a benchmark for nations worldwide, highlighting that the well-being and rights of citizens are paramount and non-negotiable.

### Urge Adherence to ECtHR Decisions:

The international community should exert consistent pressure on the Turkish Constitutional Court to faithfully implement ECtHR Grand Chamber's Yalçinkaya judgment. Adherence to such international decisions underscores the importance of upholding the rule of law and safeguarding human rights.

The unfolding events in Turkey are not just a regional concern; they bear implications for the broader human rights discourse globally. It's time for collective action to ensure that fundamental rights and liberties are preserved and promoted everywhere.

## **Conclusion:**

### **The Imperative of Global Solidarity in the Face of Repression**

The unfolding crisis in Turkey is not merely a domestic issue; it is a testament to the challenges posed to international standards and the very fabric of human rights conventions. The judgment from the ECtHR was a beacon of hope, signaling a potential turning point towards justice and accountability. Yet, the subsequent actions and resistance by Turkey have cast a shadow over these aspirations.

In this intricate tapestry of geopolitics and human rights, the onus is on the international community. Silence or inaction can inadvertently validate the repression. It is essential that nations come together, in unity and purpose, to champion the cause of justice, fairness, and human rights. This isn't just about Turkey — it's about setting a precedent for accountability, transparency, and the inalienable rights of individuals everywhere. In a world where rights are increasingly at risk, collective action becomes not just a responsibility but a moral imperative.

