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Meeting: 1537th meeting (September 2025) (DH)

Communication from NGOs (The Arrested Lawyers Initiative and The Italian Federation for Human Rights) (04/07/2025) in the case of Yuksel Yalcinkaya v. Türkiye (Application No. 15669/20).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1537e réunion (septembre 2025) (DH)

Communication d'ONG (The Arrested Lawyers Initiative et The Italian Federation for Human Rights) (04/07/2025) dans l'affaire Yuksel Yalcinkaya c. Türkiye (requête n° 15669/20) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Council of Europe
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NGO Communication under Rule 9(2) of the Rules of the Committee of Ministers concerning the execution of the judgment of the European Court of Human Rights in the case of *Yüksel Yalçınkaya v. Türkiye (Application no. 15669/20)*

Submitted by: The Arrested Lawyers Initiative and The Italian Federation for Human Rights

Date: 4 July 2025

I. Introduction

1. The Arrested Lawyers Initiative[1] and The Italian Federation for Human Rights[2] respectfully submit these observations and recommendations under Rule 9(2) of the "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements" concerning the execution of the Grand Chamber of the European Court of Human Rights' judgment in *Yüksel Yalçınkaya v. Türkiye (Application no. 15669/20)* dated 26 September 2023.

2. This Rule 9.2 submission is presented to the Committee of Ministers of the Council of Europe concerning the execution of the judgment of the European Court of Human Rights (ECtHR) in the case of Yalçınkaya v. Türkiye (Application No. 15669/20). Despite the final

[1] The Arrested Lawyers Initiative a Brussels-based rights group consists of lawyers making advocacy to ensure lawyers and human rights defenders perform their duty without fear of intimidation, reprisal, and judicial harassment. The Arrested Lawyers Initiative is a member of the International Observatory for Lawyers.

[2] The Italian Federation for Human Rights – Italian Helsinki Committee (under the acronym, FIDU) is an organization of the Third Sector, i.e. a non-profit civil society organization. FIDU is based in Rome and operates throughout Italy and worldwide; carries out its activities through its national and local bodies, and achieves its goals in compliance with international and EU standards, as well as with the Italian Constitution and laws; it is non-profit-making and pursues civic, solidarity and social utility purposes by carrying out activities of general interest; can join international federations and networks of associations that pursue the same ends with the same methods; it can bring together other associations with a federation pact.

and binding nature of the Court's judgment, Turkish judicial authorities have persisently refused to take any steps to implement the decision. More alarmingly, recent developments demonstrate an open defiance of the Court's findings and a systematic erosion of judicial independence in Türkiye.

3. This submission provides:

i. A summary of the findings of the ECtHR in the Yalçınkaya case;
ii. An account of the response of the Kayseri 2nd High Criminal Court upon retrial;
iii. An overview of the Kayseri Regional Court of Appeal's subsequent ruling;
iv. A statement on what Turkish courts should have done to comply with the ECtHR judgment.
v. An analysis of unaddressed issues regarding digital evidence and privacy in the ECtHR's approach.
vi. Our concerns about the Committee of Minister's Decision adopted during 1531st meeting (10-12 June 2025 (DH))[3]
vii. A summary of relevant findings and observations from the Briefing Paper of Human Rights Watch (HRW, International Commission of Jurists (ICJ), Turkey Human Rights Litigation Support Project (TLSP) , focusing on tactics employed by Türkiye to defy ECtHR judgments.[4]

II. The ECtHR Judgment in Yalçınkaya v. Türkiye

4. On September 26, 2023, the Grand Chamber of the ECtHR delivered its judgment in *Yalçınkaya v. Türkiye*, and found multiple violations of the European Convention on Human Rights in the applicant's conviction under Article 314 of the Turkish Penal Code for alleged membership in an armed organisation (designated by the Turkish authorities as FETÖ/PDY), based on the use of the ByLock application, Bank Asya transactions, and trade union membership.

5. The Court identified the following violations:

- **Article 7 (No Punishment without Law):** The ECtHR ruled that the application of vague and overbroad anti-terrorism provisions to convict the applicant based on the use of the ByLock messaging app, bank account transactions with Bank Asya, and trade union membership did not meet the standards of foreseeability and legal certainty.
- **Article 6 §1 (Right to a Fair Trial):** The applicant's trial was deemed unfair due to the reliance on digital evidence whose authenticity and integrity were not properly examined, and due to the lack of independent judicial oversight.
- **Article 6 §3 (b) and (c) (Rights of the Defence):** The Court found that the applicant had been denied adequate time and facilities to prepare an effective defence and had insufficient access to the evidence and legal counsel.

[3] https://hudoc.exec.coe.int/?i=DH-DD(2025)540E

[4] Defiance of European Court Judgments and Erosion of Judicial Independence (June 2025) https://www.hrw.org/node/391591/printable/print

- **Article 11 (Freedom of Assembly and Association):** The applicant's trade union and association memberships were unlawfully used as evidence of criminal conduct, despite their lawful operation prior to the 2016 coup attempt.

6. The Court explicitly ruled that these violations were systemic and indicated the necessity of general measures beyond the individual case. The judgment called for the reopening of the proceedings and other forms of restitution in line with Article 46 of the Convention.
7. Since then the Court has communicated 5,000 similar applications to Turkey which highlights the systemic nature and grave scale of the issue.

III. Reaction of the Kayseri 2nd High Criminal Court

8. In response to the ECtHR judgment, the Turkish government submitted to the Committee of Ministers that the retrial of Mr. Yalçınkaya had been granted, implying compliance with the ECtHR ruling.
9. However, on March 14, 2024, the Kayseri 2nd High Criminal Court rendered a new judgment after the retrial, which upheld the original conviction. The decision restated prior findings without addressing the core violations identified by the ECtHR.
10. The court failed to engage in any substantial legal reassessment or evidentiary reconsideration. Instead, it reiterated that the use of the ByLock app, employment at a private school, and trade union membership constituted sufficient evidence of terrorist affiliation. This decision showed that the retrial was a mere formality, lacking in substance, and further eroded public confidence in the domestic legal process.

IV. Decision of the Kayseri Regional Court of Appeal

11. In April 2025, the Kayseri Regional Court of Appeal (3rd Criminal Chamber) upheld the decision of the 2nd High Criminal Court.
12. The appellate court's ruling confirmed the lower court's interpretation and failed to address any of the deficiencies identified by the ECtHR. It justified its decision by stating that the evidence in question had already been assessed and that no new grounds for acquittal existed, thereby ignoring the binding nature of the ECtHR's findings and the requirement for Convention-compliant interpretation.
13. Legal scholars and human rights monitors have criticized this ruling as emblematic of judicial defiance. By upholding this conviction, Turkish courts have shown a clear disregard for the ECtHR and the accompanying international obligations Türkiye has undertaken under the Convention.

V. What Turkish Courts Should Have Done Following the Yalçınkaya Judgment

14. In light of the binding nature of the Grand Chamber judgment in Yalçınkaya v. Türkiye, Turkish courts were required to take the following steps to ensure meaningful compliance[5]:

[5] For a detailed anaylsis on the *Yalçınkaya* judgment which proposes a wide set of recommendations for its fuller implementation, see: Emre Turkut and Ali Yildiz, "ByLock Prosecutions and the Right to Fair Trial in Turkey: The ECtHR Grand Chamber's Ruling in Yüksel Yalçınkaya v. Türkiye" (2024), available at: https://www.statewatch.org/media/4200/sw-echr-yalcinkaya-bylock-report.pdf.

i. **Conduct a Genuine Retrial:** The retrial should have fully addressed the violations under Articles 6 and 7 ECHR. This includes a comprehensive reassessment of all evidence and the exclusion of any materials found to be procedurally or substantively flawed.

ii. **Recharacterise the Use of ByLock:** Courts should have revisited the blanket presumption that use of the ByLock application constitutes evidence of membership in a terrorist organisation. Instead, they should have assessed whether the applicant's conduct satisfied the legal criteria of "organic membership" and "hierarchical relationship" under Turkish criminal law and as per the Turkish Court of Cassation standards (namely, continuity, diversity, intensity, and knowing/willing participation).

iii. **Provide Access to Digital Evidence:** In accordance with the principle of equality of arms, courts should have ensured that the applicant and defence were granted full access to the complete ByLock dataset, including server logs, metadata, and user-specific logs, as highlighted by the Turkish Constitutional Court in *Pehlivan*, *Bağcıoğlu*, and *Başat* decisions.

iv. **Commission Independent Forensic Reviews:** Courts should have appointed impartial digital forensic experts to examine the integrity and authenticity of the ByLock data, assess gaps, and verify the chain of custody. This could have the potential to ensure reliability and compliance with fair trial rights.

v. **Investigate Exculpatory Evidence:** Turkish courts had an obligation to proactively identify and consider any potentially exculpatory evidence, including deleted, manipulated, or omitted records.

vi. **Scrutinise MIT Involvement:** Courts should have evaluated the role of the National Intelligence Agency (MIT) in the acquisition and processing of the ByLock data, especially its extraction without judicial supervision. The chain of custody must be clearly established and verified.

vii. **Apply the Objective Effect Doctrine:** Consistent with the Turkish Constitutional Court's Ibrahim Er ruling, courts should have acknowledged the objective effect of the Yalçınkaya judgment, applying it to other similarly situated cases and guiding future jurisprudence.

viii. **Ensure Reasoned Judgments:** Decisions should have been grounded in legal reasoning that reflected the ECtHR's findings. Failure to do so contravenes both Article 6 ECHR and Article 36 of the Turkish Constitution.

ix. **Address Retrospective Application of the Law**: Decisions should have ensure the non-retrospective application of terrorist designations to pre-2016 ByLock use, as the Gülen Movement was not proscribed as a terrorist organization at the time.

x. **Guarantee Effective Remedies:** The courts were expected to ensure not only a formal review, but also a substantive remedy capable of reversing the consequences of the human rights violations found in the Yalçınkaya case.

15. By failing to take these steps, Turkish courts have not only disregarded their obligations under Article 46 of the ECHR but also perpetuated the structural deficiencies condemned by the Grand Chamber.

VI. Pattern of Defiance: Tactics Deployed by the Turkish Authorities to Defy the Binding Rulings of the ECtHR Without Facing the Consequences

16. Instead of taking the steps outlined above, the Turkish authorities demonstrated open defiance toward the binding judgment of the Grand Chamber.

17. This pattern of non-compliance is further documented in a June 2025 Background Briefing Report titled *"Defiance of European Court Judgments and Erosion of Judicial Independence"*, jointly published by Human Rights Watch (HRW), the International Commission of Jurists (ICJ), and the Turkey Litigation Support Project (TLSP). The report details the increasingly systematic tactics employed by the Turkish state to evade and neutralize the implementation of ECtHR judgments.

18. Key tactics outlined and identified in the briefing report include:

i. **Superficial Compliance:** Türkiye often initiates retrials or reviews as a formalistic gesture while ensuring the outcome remains unchanged. These proceedings fail to meet the standards set out by the ECtHR, as seen in the Yalçınkaya case.
ii. **Recharacterisation of Evidence:** Turkish courts persist in treating the same flawed evidence as valid and sufficient, even after the ECtHR has ruled it inadequate. For instance, digital communications, trade union membership, and banking activities continue to be interpreted as terrorism indicators.
iii. **Political Messaging through Courts:** Selective enforcement is used to send signals to dissidents. The report notes that symbolic figures like Mr. Yalçınkaya are targeted more harshly to deter others from pursuing legal remedies.
iv. **Disinformation in International Fora:** The government provides misleading information to international bodies, including the Committee of Ministers, to create an illusion of compliance while judicial organs act contrary to the ECtHR's judgments.
v. **Weakening Judicial Independence:** The report emphasizes the systemic control of the judiciary by the executive. Judges are under constant pressure to deliver rulings aligned with political interests, creating a climate where Convention compliance is not only de-prioritized but potentially penalized.
vi. **Fragmentation of Accountability:** The Turkish legal system uses procedural compartmentalization to deflect responsibility. While government representatives assure international actors of implementation, domestic courts interpret and enforce judgments in a manner detached from Strasbourg jurisprudence.

VII. Concerns about the Committee of Minister's Decision adopted during 1531st meeting (10-12 June 2025 (DH))

19. While the Committee of Ministers, in its decision adopted at the 1531st DH meeting (10–12 June 2025), welcomed certain developments in the domestic judicial practice of Türkiye concerning the execution of the Grand Chamber's judgment in *Yüksel Yalçınkaya v. Türkiye* (Application No. 15669/20), we respectfully submit that a more cautious and evidence-based assessment is warranted, particularly in light of the findings presented in above mentioned briefing *of* HRW-ICJ-TLSP.

20. The Committee noted with approval examples of Convention-compliant jurisprudence, especially by the Court of Cassation, in establishing the material and mental elements of the offence of membership in an armed terrorist organisation. While such examples are welcome, their probative value should be carefully contextualized. According to the aforementioned HRW-ICJ-TLSP briefing, these cases appear to be limited and exceptional, and do not yet indicate a consistent or systemic shift toward alignment with Convention standards. On the contrary, the report documents a pattern of entrenched judicial practices—particularly at the level of first instance and appellate courts—that continue to apply blanket evidentiary presumptions, disregard individual circumstances, and fail to incorporate the criteria articulated by the Grand Chamber in *Yalçınkaya*. In this regard, the Committee's reliance on selected positive examples risks conveying an impression of progress that is not borne out by the broader reality.

21. More alarmingly there no domestic court ruling has been reported that invoked *Yalçınkaya ruling applied it in line with the ECtHR.*

22. The Committee further noted that, in principle, effective remedies remain available at the domestic level, including through individual applications to the Constitutional Court and, ultimately, to the European Court. However, this conclusion must be evaluated in light of the serious concerns raised in the HRW-ICJ-TLSP briefing about the **effectiveness and independence of these remedial avenues**. In particular, the Turkish Constitutional Court has demonstrated a pattern of deferring to executive narratives and has not provided meaningful redress in cases involving structural Convention violations, such as those involving mass terrorism prosecutions. In this context, the suggestion that applicants "could have applied" to the European Court risks obscuring the systemic shortcomings of domestic remedies and inadvertently undermines the principle of subsidiarity, which presupposes the availability of genuinely effective national mechanisms.

23. In sum, while the Turkish authorities use same tactics identified in the HRW-ICJ-TLSP briefing. Although Turkey has provided isolated examples of Convention-aligned judicial decisions, these do not yet constitute evidence of systemic change or good faith execution of the *Yalçınkaya* judgment. The Committee is encouraged to take full account of the broader institutional context, as documented by leading human rights organisations, and to adopt a more rigorous and outcome-oriented approach in its future supervision of this judgment. This would include requesting detailed and disaggregated data on judicial decisions, explicitly addressing concerns about the Constitutional Court's jurisprudence, and setting clear benchmarks for compliance that reflect the structural nature of the violations identified by the Grand Chamber.

VIII. Conclusion and Recommendations

24. The ongoing handling of the Yalçınkaya case illustrates Türkiye's failure to execute the ECtHR judgment in good faith. The retrial and appeal proceedings merely reasserted the original conviction without addressing the systemic deficiencies identified by the Court.

25. Moreover, the pattern documented by HRW indicates that the Yalçınkaya case is not an isolated incident but part of a broader strategy to undermine the authority of the ECtHR and render the Convention system ineffective within Türkiye.

26. **We respectfully urge the Committee of Ministers to:**

- Request the Turkish Government to provide verifiable evidence of compliance with the individual and general measures required by the judgment;
- Require the Turkish authorities to ensure that retrial procedures genuinely reflect the findings of the ECtHR and result in the quashing of flawed convictions;
- Demand appropriate safeguards for the use of digital evidence in criminal proceedings in similar cases;
- Demand the Turkish authorities to investigate privacy violations in ByLock data acquisition;
- Insist on reforms to restore judicial independence and uphold Convention standards.

Furthering ECHR Compliance in Turkey

This submission is prepared within the scope of the project called Furthering ECHR Compliance in Turkey co-run by the Arrested Lawyers Initiative