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How to Get Away with Enforcing the ECtHR Decisions: Nine Procedural Recommendations for Governments Intent on Authoritarianism

PEN Norway Turkey Indictment Project

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About the Author

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The European Convention on Human Rights (The Convention or ECHR) enjoys a special status among all the international human rights regulations: The Convention benefits from a strong and effective judicial review mechanism. Such a judicial review is administered through the European Court of Human Rights (The Court or ECtHR). Established and regulated by the Section II of the Convention, the ECtHR is a standing court.

As it is known, the Convention has been signed by the Member countries of the Council of Europe to which The Court belongs as a body. In accordance with Article 46 of the Convention "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties." In other words, the states that are party to the Convention acknowledge the jurisdiction of the Court as well as the binding nature of its judgments.

Moreover, according to Article 90 of the Constitution of the Republic of Turkey, "International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." The Constitution groups the international agreements duly put into effect into two categories. The first category includes all kinds of international agreements, which are given the force of law and cannot be appealed on the grounds that they are unconstitutional. Second category includes the international agreements on fundamental rights and freedoms, which, as for those in the first category, are given the force of law and cannot be appealed on the grounds that they are unconstitutional. However, in cases where those international agreements contain provisions that are incompatible with those in the domestic law, the provisions of international agreements shall prevail, which gives such kinds of agreements the force of law as well as raising them above the law by a degree.

As an international agreement, duly put into effect, concerning fundamental rights and freedoms, the ECHR is a binding agreement. So much so that it is given the same status as the law, but in a way to underline its supremacy over the domestic law the ECHR cannot be appealed on the grounds that it is unconstitutional, and its provisions shall prevail in cases where its provisions are incompatible with those in the domestic law. As mentioned above, it is an absolute obligation for Turkey to comply with the ECtHR judgments, since article 46 of the Convention stipulates that the states undertake to abide by the ECtHR judgments.

The implementation of ECtHR judgments by the state parties is overseen by the Committee of Delegates on behalf of the The Committee of Ministers of the Council of Europe. The Committee of Ministers and the Committee of Delegates that is formed by it are both structures set up by a group of politicians. The technical review is carried out by The Department for the Execution of Judgments of the European Court of Human Rights formed under the mandate of

the Directorate General Human Rights and Rule of Law of the European Commission.[1] The main function of the Department is to advise and assist the Committee of Ministers. The rules of the Committee for the supervision of the execution of judgments are adopted on 10 May 2006 and named as The Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements.[2] According to the Rule 11 of that document, if the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.

The domestic responsibility for the implementation of the ECtHR judgments in Turkey rests with the Department of Human Rights of the Ministry of Justice (DHR). In accordance with Article 1/c of the Decree Law No. 650, DHR is assigned responsibility to supervise the execution of ECtHR judgments. As per the law, DHR is tasked with taking general measures regarding the execution of ECtHR judgements against Turkey regarding the violations, communicating such judgements to the relevant authorities and supervising the processes to ensure the correction of the violation.

Any ECtHR judgement regarding a certain violation is significant in two respects, one individual and one general. Individually, such a judgement establishes the fact that a certain right of the applicant or applicants is violated. Based on this fact, the ECtHR determines a corrective action, if possible, to correct the violation and/or its consequences. In some cases where such an action is not possible, the Court awards compensation. Generally, the Court may rule for certain measures that would stop the violation in question for everyone and that would prevent the continuation of it. For example, domestic law may need to be changed.

Would a legal mechanism that is ideally expected to operate in this way be abused? Can certain procedures to obstruct the actual execution of ECtHR judgments be invented despite the presence of strong international and national regulations? The ECtHR judgements regarding a certain violation establish that a state party violated human rights. This means that a certain state party, which is expected to comply with the ECtHR judgments, is known to have previously violated human rights. The same state may also cause another violation by not complying with the ECtHR's judgments. Even if the states are willing to refuse to comply with the ECtHR judgments, however, they need to contrive a more nuanced attitude, as the explicit display of such a willingness may have unwanted consequences. Based on the example of Turkey, this study will provide a practical guide for the governments intent on getting away with enforcing the ECtHR judgments or rendering it ineffectual. It is important to point out that the procedures that will be outlined here have been tried and proven to be highly successful! Moreover, a

[1] for the website of the Department, please see: https://www.coe.int/en/web/execution
[2] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805905e5

successful implementation of those procedures allowed Turkey to avoid any onerous sanctions. The procedures outlined here can be implemented with guaranteed results and without any prejudice to the country's membership to the European Commission, its status as a state party to the ECHR and its undertaking to abide by the ECtHR jurisdiction. Here are our practical recommendations for the governments intent on authoritarianism.

1-) Delay it by exploiting all available time limits

Certain time limits of the ECtHR proceedings are not explicitly prescribed in the Convention. Neither do Additional Protocols include such prescriptions. Such procedural matters can be found in the Rules of Court. As a matter of fact, the states' periods of reply and reply to the reply are determined by ad hoc decisions. Rule 38 provides a broad definition as to the time-limits: "No written observations or other documents may be filed after the time-limit set by the President of the Chamber or the Judge Rapporteur, as the case may be, in accordance with these Rules. No written observations or other documents filed outside that time-limit or contrary to any practice direction issued under Rule 32 shall be included in the case file unless the President of the Chamber decides otherwise."

And parallel to that broad prescription, Rule 49, in prescribing the way a single judge shall examine the individual application, provides that the Judge Rapporteur "may request the parties to submit, within a specified time, any factual information, documents or other material which they consider to be relevant." Likewise, Rule 59 on the procedures for the examination of individual applications by the Chamber, prescribes that "unless decided otherwise, the parties shall be allowed the same time for submission of their observations." Thus, it can be concluded that such time-limits can be determined by the judge or the Chamber examining the case file.

Exploiting all the available time limits until the last minute would primarily work to detain a probable judgment regarding a violation. Besides, it is perfectly legitimate to do so. There are a multitude of time-limits in the proceedings that could be deferred until the last minute: Period of first reply, period of second reply, time-limits for the filing of the documents, application period to the Grand Chamber, various periods of communication, etc. etc. Holding it up until the end of each time-limit may buy time that could add up to months in total. When you hold it up until the end of every time-limit, this would practically mean the deferral of the implementation terms of a possible judgment regarding a violation. For example, there will be certain time-limits set by the Court for the compensation payments or for the removal of the consequences of the violation as well as time-limits originating from the functioning of domestic law and the nature of the incident. Two institutions will have to exchange correspondence with each other for example. Such time-limits could be exploited until the last day and even the last minute of the last day. Which could in turn buy days or weeks.

2-) Request extensions of time-limits or additional time

This is a right that parties can enjoy. Then why shouldn't you enjoy it? According to Article 19 of the Practice Directions titled "Written pleadings", "a time-limit set under Rule 38 may be extended on request from a party." The next article states, "A party seeking an extension of the time allowed for submission of a pleading must make a request as soon as it has become aware of the circumstances justifying such an extension and, in any event, before the expiry of the time-limit. It should state the reason for the delay."

Turkey effectively exercises her right to seek an extension of time and reaps considerable benefits from this practice. For example, in the case of Cumhuriyet / Sabuncu and Others v Turkey (No: 23199/17) the Court first gave Turkey a time limit for the statement of defence until October 2nd, 2017. And at the end of that date, Turkey, instead of filing a statement of defence, sought an extension of time, which the Court agreed and extended until October 24th. However, instead of filing the statement of defence, the government once again held it up until the last day and sought another extension. The High Court which was too meticulous to ignore the slightest procedural error by the applicant party gave another extension to Turkey until the November 7th, stating that it was the last time.[3] Yet Turkey did not file its statement of defence and requested another extension on the very last day.[4] Although the court did not grant another extension, Turkey managed to file a sixty-page defence statement a few days later.[5] Therefore, in terms of the statement of defence alone, a period of almost a month and a half was bought.

Seeking an extension stands as one of the most favoured procedures in terms of the government of Turkey's ECtHR practice. In the case of Ahmet Şık v. Turkey (No: 36493/17), Turkey did not file a statement of defence until the last day of the time-limit (October 25th, 2017) and sought an extension. Likewise, in the case of Deniz Yücel v. Turkey (No: 27684/17), Turkey's time-limit for the statement of defence expired on October 24th, 2017, after which the government sought an extension. The government, however, did not file a statement of defence on November 14th either and the Court granted another extension until November 28th.[6] We should also keep in mind that Şık and Yücel were under arrest throughout these extensions. In the case of Wikipedia v. Turkey, during the hearing on July 2, 2019 the Court addressed seven questions to the government of Turkey to be answered by October 24. Having left the questions unanswered by that date, the government of Turkey sought a six-week extension on the very last day, which was granted by the Court.[7] Merging the applications of several signatories of the Academics for Peace declaration, the ECtHR demanded Turkey to file its statement of defence by October 2021 by the end of which Turkey sought an extension which the Court granted until

[3] https://bianet.org/english/insan-haklari/190921-aihm-den-turkiye-ye-cumhuriyet-davasinda-yine-ek-savunma-suresi
[4] https://www.cumhuriyet.com.tr/haber/hukumet-aihmde-savunma-yapamiyor-862425
[5] https://www.dw.com/tr/ankara-cumhuriyet-davas%C4%B1nda-savunma-verdi/a-41352722
[6] https://www.dw.com/tr/aihmden-t%C3%BCrkiyeye-son-m%C3%BChlet/a-41268322
[7] https://www.dw.com/tr/t%C3%BCrkiyeye-wikipedia-savunmas%C4%B1-i%C3%A7in-ek-s%C3%BCre/a-51028323

January 10, 2022. In a nutshell, signatories of the Academics for Peace declaration had been dismissed from public office about 5 to 6 years ago by a decree law and some of their applications had been rejected by the Court on the grounds that the domestic remedies had not been exhausted. The rest of the applications were detained before the court for a considerable amount of time after which the government of Turkey was notified and granted a generous time-limit for the filing of the first statement of defence. By the time the government's request for extension was granted, The State of Emergency Inquiry Commission, which the ECtHR held as an effective domestic remedy, had not yet issued a single decision regarding a signatory of the Academics for Peace declaration.

3-) Invent a domestic remedy from scratch

Let's pick it up from where we left in the previous paragraph. The Court had declared inadmissible the first applications of the signatories of the Academics for Peace declaration on the grounds that the domestic remedies had not yet been exhausted. For example, the application (no. 54668/17) of the author of this article to the ECtHR regarding his dismissal from the public office by a decree law was declared inadmissible by the Court which referred to the State of Emergency Commission that was established a year after the Academics for Peace declaration in question was signed and publicized. Moreover, some signatories (and in fact tens of thousands of other public officials) had been dismissed from public office by the decree laws issued before the Commission in question was established. In other words, from the perspective of many applicants both their act and the legal proceedings against them materialized long before the establishment of the Commission. The Commission in question was established with this particular objective of assessing the acts and proceedings that took place before its establishment.

The State of Emergency Inquiry Commission was established by the Decree Law on the Establishment of the State of Emergency Procedures Review Commission published in the Official Gazette on January 23, 2017. The Commission consists of seven members. Three of its members are appointed by the Prime Minister (later on, the President) from among the public officials, a member by the Minister of Justice from among the judges and prosecutors serving in the central organization and affiliated bodies of the Ministry of Justice, a member by the Minister of Interior from among the chief local administrators, and two members by the Council of Judges and Public Prosecutors from among the rapporteur judges serving in the Council of State and the Supreme Court.

Even this concise paragraph reveals the true nature of the Commission as a non-judicial body formed one year after the Academics for Peace declaration that resulted in the dismissal of the signatories and established by the public officials that are appointed by the executive branch

who had themselves issued the dismissive decree laws. It was also clear that the act of signing a peace declaration had no connection with the state of emergency whatsoever, but the Court kept referring to the Commission as an effective domestic remedy anyway. It is worth keeping in mind that signatories filed applications to the administrative courts and then to the regional administrative courts before the Commission was established, which had been rejected on the grounds that the State of Emergency measures could not be reviewed by the courts in question. Likewise, their application to the Constitutional Court was declared inadmissible for lack of jurisdiction. Therefore, by the years 2016-2017, the domestic remedies had already been exhausted for tens of thousands of public officials, including the signatories of the Academics for Peace declaration.

However, the government of Turkey managed to promote an administrative commission found only recently as an effective domestic "legal" remedy, which supposedly relieved the ECtHR from receiving numerous applications and saved the government of Turkey from the convictions it would otherwise be facing. The ECtHR's take in the case of Köksal v. Turkey (No. 70478/16) has been encouraging for the government in this regard. Because, the Commission had not yet been operative and started processing applications when the Court had handed down its judgment in the case of Köksal. The Court, however, declared the case as inadmissible on the grounds that the domestic remedies had not been exhausted.

It soon became clear that the Commission was not an effective remedy. Established for two years in January 2017, the Commission only became operative in December, meaning that it had not processed even one of the tens of thousands of pending cases one year after its establishment. Nobody was surprised when those cases had not been handled within two years. As we are heading towards the end of 2021, that is, five years after its establishment, the Commission is still operative. As of 28/10/2021, 7% of the applications are still waiting to be processed.[8] Moreover, the Commission's admissibility rate, which is 8%, is too low to be seen as an effective remedy. In other words, eight out of a hundred individuals could expect to get a positive decision, with the rest 92 individuals are waiting to be able to file an application to the ECtHR for more than five years now. Furthermore, the decisions granted by the commission are not final but subject to judicial review. The decisions of the Commission must be taken to the administrative courts which five or six years ago dismissed the initial applications for lack of jurisdiction. Therefore, the only function of the State of Emergency Inquiry Commission in this whole process has been to defer the judicial review by the administrative courts of the dismissals. There is much more to it than that. Once issued, the decision of the Commission can only be appealed to a handful of administrative courts in Ankara specially assigned to this task. Rejected by the Commission, the cases of nearly 100,000 people are piling up before these courts with a waiting period of probably a few more years. Then the hierarchy of appeal courts would be traversed first through the regional administrative courts, and then maybe through the

[8] https://ohalkomisyonu.tccb.gov.tr/

Council of State and the Constitutional Court, and only those who succeeded in exhausting the domestic remedies would be able to file an application to the ECtHR. One need not be an oracle to imagine that this pre-ECtHR process, which had taken more than six years already, would probably limp along for another 15 years. And with the ECtHR process, one can assume that it would take another three to five years should the government implement the practical recommendations of this manual.[9]

4-) Take advantage of any possible means of appeal and pleading against an ECtHR judgement of any level

Again, this is a right the parties can enjoy, and it is completely legal... The Rules of Court grants the parties the right to make pleadings on various issues. An important plea the state party could use is the first plea which includes the pleas of inadmissibility of the Rule 55. But the Rule 73 on the "Request by a party for referral of a case to the Grand Chamber" is unmistakably the most important tool that could significantly delay the execution of ECtHR judgments. Accordingly, "In accordance with Article 43 of the Convention, any party to a case may exceptionally, within a period of three months from the date of delivery of the judgment of a Chamber, file in writing at the Registry a request that the case be referred to the Grand Chamber. The party shall specify in its request the serious question affecting the interpretation or application of the Convention or the Protocols thereto, or the serious issue of general importance, which in its view warrants consideration by the Grand Chamber."

Obviously, this rule works like an appeal against the judgment of the Chamber. Furthermore, a period of three months is granted, which I assume by now the reader could immediately see that this is just another deadline that could be exploited to the last day.

Let's take a closer look at the case of Selahattin Demirtaş v. Turkey (No. 2) (No: 14305/17).[10] Demirtaş filed an application to the Court for an alleged breach of Articles 5, 10 and 18 of the Convention and Article 3 of Protocol No. 1 to the Convention, and the government of Turkey was given notice of the application. Chamber of Second Section of the Court found, unanimously, that there had been no violation of Article 5 § 1 and of Article 5 § 4 of the Convention and that

[9] n.b. I had written that "By the time the government's request for extension was granted, The State of Emergency Inquiry Commission, which the ECtHR held as an effective domestic remedy, had not yet issued a single decision regarding a signatory of the Academics for Peace declaration." The Commission began firing "rejections" one after another once the extension was granted. But it is most likely that by the time the reply period is over on January 10, 2022, the Commission will have issued the rejections for all signatories of the Academics for Peace declaration. By experience we know the tired statement the government would issue on January 10th -unless it seeks an extension of course: "The domestic remedies have not yet been exhausted as the Commission issued its decision and the administrative procedures are performed.

[10] https://hudoc.echr.coe.int/eng?i=001-207173

there had been a violation of Article 5 § 3 of the Convention and of Article 3 of Protocol No. 1. The Chamber also found that there had been a violation of Article 18 of the Convention in conjunction with Article 5 § 3. The Chamber held that the Turkish state was to take all necessary measures to put an end to the applicant's pre-trial detention. However, on 19 February 2019, the Government (and the applicant too, on the grounds that his immunity was revoked unconstitutionally) requested that the case be referred to the Grand Chamber in accordance with Article 43 of the Convention. The panel of the Grand Chamber accepted the requests on 18 March 2019.[11] Grand Chamber of the ECtHR "ruled on December 22, 2020, that by holding Demirtaş in pretrial detention since November 2016 and prosecuting him for his activities and speeches protected under the European Convention on Human Rights (ECHR), the Turkish authorities had pursued an ulterior purpose of preventing him from carrying out his political activities, depriving voters of their elected representative, and 'stifling pluralism and limiting freedom of political debate: the very core of the concept of a democratic society".[12] Likewise in the case concerning the exemption of the children of Alevi citizens from religious culture and ethics classes (Mansur Yalçın and others v. Turkey, No: 21163/11), in a judgment on September 16, 2014 the Chamber held unanimously that the government, without delay, needed to introduce a new system where the students would be exempted from attending to the religious culture and ethics classes. However, the government of Turkey referred this judgment to the Grand Chamber on the very last day of the time-limit granted by the Court.[13]

It is unlikely that the government of Turkey will have the Chamber judgment quashed by the Grand Chamber. However, this allows the government to impede for a significant amount of time the implementation of the judgment on the grounds that there is no "final decision" even when it is about in the cases where the Chamber found severe violations of human rights.

5-) Wait for the official translation of the ECtHR judgment and claim that you never received it

Following the Chamber judgment on Demirtaş case, his lawyers demanded his release, which the Ankara 19th Assize Court refused to grant on the grounds that it would wait for the official translation, even though lawyers of Demirtaş had a translation available. While the official translation was prepared, the government of Turkey referred the case to the Grand Chamber and refused the grant a release on the grounds that there was not an official judgment yet.

On December 22, 2020, the ECtHR Grand Chamber found a violation and held that the government was to release Selahattin Demirtaş immediately. Naturally, the lawyers of Demirtaş

[11] https://anayasagundemi.files.wordpress.com/2020/12/demirtas-bd-ceviri-1.pdf
[12] https://www.hrw.org/tr/news/2021/06/08/378883
[13] https://odatv4.com/makale/alevileri-ilgilendiren-bu-mahkeme-kararlarinda-kafalar-karisik-1902151200-71838

demanded him to be released immediately. The Ankara 7th Criminal Court of Peace, however, rejected the demand and ordered the continuation of his detention on the grounds that "the Chief Public Prosecutor's Office of Ankara requested the translation of the judgment in question from the Ministry of Justice via a letter which has not been replied yet. The lawyers of the suspect submitted a judgment that is not translated and as it could not be known which application the ECtHR ruling is referring to, which offenses it concerns and the scope of the ruling, it has been understood that the ruling in question is not suitable for a legal review." And until the translation of the judgment could be delivered, his conviction from another case before the Assize Court was mobilized to keep him under continued detention.

6-) Make the case as intricate as possible, so that neither the judges of the ECtHR nor the national/international public can fully grasp its scope

There is only a tiny group of lawyers who could follow the legal journey of the case of Osman Kavala. Let's have a look at the case:

"How many detention and release orders have been issued for Osman Kavala so far? Here is the chronology of this legal horror movie: On November 1, 2017, two separate detention orders were issued for him on the grounds of attempted overthrow of the government (which later became the Gezi Case) and attempted coup. As to the latter allegation, he was released on October 11, 2019. On February 18, 2020, the court acquitted and released him of the Gezi Case. Before he was actually released, however, he was once again detained in the prisoner transport vehicle and arrested for the third time on February 19, again on the charges of attempted coup. On the evening of March 9, 2020, he was taken out of his prison cell and was arrested of the same case for the fourth time by the judge he saw on a computer screen in a prison room. This time the allegation was espionage, because the maximum legal detention period of two-years prescribed for the previous allegation was no longer applicable. Thus, on March 20th, his detention concerning the attempted coup was revoked as the maximum legal detention period of two-years expired and a third release order was issued. As a result, Osman Kavala has been under continuous detention since November 1, 2017. And this is despite the European Court of Human Rights found the most severe violation possible and held that he was arrested for politically-motivated reasons".[14]

His case is registered in the ECtHR as Kavala v. Turkey, No: 28749/18. A chronological summary of the case could be found on the The Department for the Execution of Judgments of the European Court of Human Rights website.[15] As even the summary of the case in question is

[14] https://birartibir.org/yeniden-tutuklandi/
[15] https://hudoc.exec.coe.int/eng?i=HEXEC(2021)10-TUR-Kavala-ENG

very difficult to comprehend, let's try to summarize the summary: Kavala was detained on October 18, 2017, He was persecuted under the Article 309 (violation of the constitution, attempted coup) and Article 312 (offences against the government) of the Turkish Penal Code. On October 11, 2019, he was released on charges of attempted coup, but he remained in pre-trial detention on charges of the latter offence. On February 18, 2020, he was acquitted of the second charge as well. He was ordered to be released but before he was able to spend a night at home, another warrant has been issued to place him in a pre-trial detention on the very same day. Meanwhile, an inquiry was launched against the judges who acquitted him. On March 9, 2020, the court decided he was to remain under pre-trial detention on charges of espionage under Article 328 of the Turkish Penal Code. In between those events, there had been many Constitutional Court applications, judgments quashed by the Court of Appeal, appeals to the Supreme Court, ECtHR applications, various pre-trial detention orders on charges of three different offences and some other judicial processes. And as I was writing this article the Committee of Ministers of the Council of Europe decided to initiate the infringement procedure.

It's dizzying, isn't it? It must be... Is it even possible that, without the full knowledge of the perplexing intricacies of the judicial system in Turkey, the national and international public could make sense of this complicated process? Of course not. Having turned the whole process into something inscrutable, the choir of government officials now chant the following exclusive tune: "The Turkish judiciary is independent and making its own judgments which you should respect."

7-) If the implementation of a decision has become inevitable, launch another investigation/prosecution against the same person and treat it as the new basis of the old process

Very much like a Russian doll, the nested charges based on Articles 309, 312 and 328 of the Turkish Penal Code come out within the scope of different files, eventually forming a whole. Let's have a brief look: The Article 309 of the Turkish Penal Code prescribes the offence of violation of the constitution. This is the offence of attempting to abolish, replace or prevent the implementation of, through force and violence, the constitutional order of the republic of Turkey. Article 312 prescribes the offences against the government, and it punishes the offence of attempting, by the use of force and violence, to abolish the government of the Republic of Turkey or to prevent it, in part or in full, from fulfilling its duties. Article 328 prescribes the political or military espionage. This is the offence of securing information that, due to its nature, must be kept confidential for reasons relating to the security or domestic or foreign political interests of the State, for the purpose of political or military espionage.

It is clear that each of the charges is extremely serious. Those Articles include very serious, concrete elements, the details of which will not be laid out here. Which means that, by their quality, the charges in question cannot just be brought through some cursory indictments. Since these are types of offences that require a serious investigation before even a suspicion could be

entertained, one might find it quite inexplicable that the same person, and in different time periods, could by coincidence became the object of suspicions regarding all those offences. But who cares? After all, an individual may have committed one of the crimes in the Penal Code, and isn't it completely legal to give them a shot no matter how strange it may seem?

Similarly, the Demirtaş case could be followed from the chronological summary on the website of the Department for the Execution of Judgments of the European Court of Human Rights.

In relation to the speeches Demirtaş gave on incidents of the October 6-8, 2014, he has investigations and prosecutions launched against him on charges of "setting up or leading an armed terrorist organization", "disseminating propaganda for a terrorist organization", "condoning crime and criminals", "insulting the public officers", "insulting the president", "holding illegal meetings and demonstrations", "provoking people to hold illegal meetings and demonstrations", "defaming the public officials", "publicly degrading the Government of the Turkish Republic", "publicly degrading the Turkish nation, the State of the Turkish Republic, institutions and bodies of the state", "publicly degrading the judicial bodies, military and security organization".[16] The charges include provoking somebody to kill another. The Office of the Public Prosecutor must have realized in 2020 that the offence of "disrespecting the national flag" was committed during the incidents in question, because the last indictment raised this charge as well.

8-) Ensure that the authorities the domestic law holds responsible for the implementation of the ECtHR judgments evade such a responsibility and claim that it would be unlawful to issue such instructions to the domestic courts

As clarified in the first section above, the Committee of Ministers is responsible for the implementation of ECtHR judgments on the Council of Europe side, whereas on the Turkish side this responsibility is held by the Department of Human Rights of the Ministry of Justice.

In a session between 14th and 16th September, The Committee of Ministers of the Council of Europe requested that Demirtas "be released, his conviction by the Istanbul Assize Court be quashed and the criminal proceedings pending before the 22nd Ankara Assize Court be terminated, together with the removal of all other negative consequences of the constitutional amendment." A newspaper reported that on September 27, 2021 the Department of Human Rights of the Ministry of Justice sent an official letter and provided an "unofficial" translation of the Committee of Ministers' request to the General Directorate of Penal Affairs, General Directorate of Penitentiary, General Directorate of the Legislation of the Ministry of Justice and

[16] https://www.aa.com.tr/tr/turkiye/demirtas-12-davada-yargilaniyor/1319453

to the Chief Public Prosecutor's Office of Ankara and Istanbul.[17] According to the same news report the letter said, "as is known, the execution of ECtHR judgments regarding a violation is monitored by the Committee of Ministers of the Council of Europe and the responsibility to follow up the processes regarding the execution of judgments (excluding matters related with the foreign policy) rests in our Ministry. As to the supervision of the execution of judgments, a series of decisions has been made in the 1411th DH Committee of Ministers meeting on 14-16 September 2021. Please find attached the unofficial translation by our Department of the decisions. Kindly submitted for your information." In other words, the Ministry, rather than ensuring "the necessary action is taken in accordance with the decision", merely "submits (it) for your information." But if someone asked why the Ministry merely submitted the decision for information rather than ensuring the necessary action is taken in accordance with it, they would customarily repeat the following: According to the Article 138 of the Constitution, "No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.

9-) Send public messages from time to time implying that the ECtHR judgments are not legal

This is the most common and easiest thing to do. Turkey is a founding member of the Council of Europe. The ECtHR is the judicial body of the Council. In other words, Turkey is one of the founders of the Court. The Council or the Court is not some sinister, obscure, or shady entity whose identity is a secret. Despite this, the government's rhetoric about "external and internal foes" fuels prejudices against every individual and institution that is not seen to be "national and domestic". Therefore, the citizens are not able to question whether the Court is actually a judicial body established by Turkey itself. It does not take much to misrepresent a judiciary body whose main task is to decide on the human rights violations by the State Parties as an anti-Turkey entity once it hands down judgments regarding the violations. Moreover, human rights defenders themselves have also criticized the ECtHR. Such criticisms that demand better treatment of human rights could easily be manipulated to foster the image of the Court as an undeniably politically motivated judicial entity.

Presidential statements such as "the judgments of ECtHR cannot replace the judgments of our own courts. That the Court requested his release is a double standard and even hypocrisy. ECtHR has to be aware that right now it is defending such a terrorist"[18]; and statements by the Chair of the Parliament such as "The ECtHR should stop defending the rights of terrorists and immediately hand down democratic and legal judgments"[19] could help to render the ECtHR

[17] https://www.gazeteduvar.com.tr/aihmin-demirtas-karari-mahkemeye-gizli-yaziyla-gayri-resmi-tercume-haber-1537410

[18] https://www.dha.com.tr/yurt/erdogan-aihm-bizim-mahkemelerimizin-yerine-gececek-sekilde-karar-veremez/haber-1804336

[19] https://www.yenisafak.com/dunya/mustafa-sentoptan-aihm-elestirisi-teroristleri-savunmayi-birakmali-3723321

judgments ineffectual for the citizens. This would also provide a strong political backing for the judges who refrain from implementing the ECtHR judgments domestically.

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The procedures to render ECtHR judgments ineffectual presented in this Guide are designed for the governments intent on authoritarianism and could be used individually or in combination. There is no fixed sequence for the procedures in question. Most importantly, a government must have a determined and consistent political will to implement them. The presence of a favourable international conjuncture and political relations such as a refugee crisis can offer some extra advantages which could keep the Council of Europe and ECtHR from taking strong measures in the face of non-implementation and thus the issue would linger merely as a protracted political crisis. The only factor that would pose risks for Europe, the ECtHR and the relevant State Party would be the strong solidarity, determination and will of human rights defenders.