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

GRAND CHAMBER

CASE OF KAVALA v. TÜRKİYE (No. 2)

(Application no. 2170/24)

JUDGMENT

Art 35 § 1 • Exhaustion of domestic remedies • Applicant could not be criticised for failing to await outcome of individual application to Constitutional Court, the effectiveness of which was seriously compromised in the particular circumstances of the present case, before applying to the European Court • Applicant's uninterrupted deprivation of liberty for eight and a half years • Consistent, diligent and unambiguous use of all available domestic remedies, without success • Persistent failure to execute binding judgments of the European Court (*Kavala v. Turkey*, and *Kavala v. Türkiye* (infringement proceedings) [GC]) and absence of practical effect of domestic acquittal judgment • Manifestly excessive delays in proceedings before Constitutional Court concerning applicant's two individual applications • Remedy in question presented no reasonable prospect of timely examination on account of Constitutional Court's procedural inertia
Art 10 and Art 11 • Freedom of expression • Freedom of peaceful assembly • Sentencing of applicant to aggravated life imprisonment for his strategic role in the planning, coordination or leadership of violent incidents during Gezi Park events, without examination of his actual involvement • Conviction based on acts directly linked to activity as a human-rights defender or his involvement in the Gezi Park events • Equating of lawful civil-society activities, protected by the Convention, with material element of an exceptionally serious offence • Court of Assize's interpretation of Criminal Code had led to indirect attribution of criminal liability for acts of violence committed by third parties, in the absence of any direct participation, incitement or accommodation on the applicant's part • Manifestly disproportionate criminal burden • Interpretation in question likely to have particularly serious chilling effect on exercise of freedoms enshrined in Arts 10 and 11 • Extension of the scope of criminal-law provision in issue had not afforded the requisite minimum protection against arbitrary interference and was not "prescribed by law"
Art 6 § 1 (criminal) • Serious shortcomings in criminal proceedings against applicant, affecting both fairness of the proceedings and guarantees of independence and impartiality of the courts • Lack of analysis of causal link between applicant's activities and the violence in question, although the offence presupposed the use of force and violence • Refusal, justified in stereotyped manner, to hear key witnesses requested by the defence without adequate procedural counterbalancing or effective review on appeal and by Court of Cassation • Conviction based on largely contextual and insufficiently individualised inferences, placing burden on the accused to refute them • Domestic courts had adopted arbitrary and unforeseeable interpretation of criminal law, to the applicant's detriment,

resulting in a manifestly unreasonable outcome of the trial • Converging elements likely to give rise to legitimate doubts regarding independence and impartiality of the courts • Successive remittals of case from one court to another • Elements to be assessed in the light of wider context of structural shortcomings affecting the independence of the judiciary in Türkiye • Shortcomings fundamentally impairing the very essence of applicant's right to a fair trial

Art 5 § 1 • Art 5 § 1 (c) and (a) • Applicant's deprivation of liberty, assessed as a whole, incompatible with the requirements of Art 5 § 1 • Arbitrary pre-trial detention, not based on reasonable grounds and not pursuing any of the legitimate aims listed in the Convention • Authorities acted in bad faith, seeking alternative grounds to ensure continuation of applicant's detention and circumvent requirements of domestic law • Detention after the applicant's conviction unlawful, in that it was based on execution of sentence imposed at close of proceedings in which there had been a flagrant denial of justice, incompatible with the fundamental guarantees of a fair trial • Deprivation of liberty in question had no permissible legal basis under the Convention

Art 18 (+ Art 5 § 1, 6 § 1, 10 and 11) • Restrictions for purpose not prescribed by Convention • Prosecution of applicant, his continued pre-trial detention and his conviction predominantly motivated by an ulterior purpose, namely, to punish him for his role in the Gezi Park demonstrations and for expressing his opinions as a human-rights defender, and to silence him

Art 3 (substantive) • Inhuman or degrading punishment • Sentencing of the applicant to aggravated life imprisonment without prospect of release or review of the sentence to take account of changes in his personal situation or his level of dangerousness • Incompatibility with Art 3 from moment of delivery of irreducible life sentence

Art 46 • Execution of judgment • Individual measures • Respondent State required to secure the applicant's release at earliest possible date, and to eliminate the consequences of the impugned conviction, regarded, from the perspective of Convention law, as null and void, and to afford effective redress for the violations found

General measures • Respondent State required to address systemic problem of prosecution and imprisonment of human-rights defenders, political opponents and journalists for criminal offences, the scope of which is extensively interpreted or artificially magnified • Respondent State required to remedy structural shortcomings which affect the guarantees of independence and impartiality of the judiciary • Need to grant priority at the domestic level to infringement proceedings in respect of the execution of judgments of European Court • Respondent State required to address systemic problem of execution of irreducible life sentences, in the absence of mechanism guaranteeing a genuine prospect of conditional release, by introducing a procedure compatible with the principles established in *Vinter and Others v. the United Kingdom* [GC

STRASBOURG

25 August 2026

This judgment is final but it may be subject to editorial revision.

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In the case of Kavala v. Türkiye (No. 2),

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mattias Guyomar, *President*,
Arnfinn Bårdsen,
Ivana Jelić,
Lado Chanturia,
Ioannis Ktistakis,
Kateřina Šimáčková,
Faris Vehabović,
Jovan Ilievski,
Gilberto Felici,
Saadet Yüksel,
Diana Sârcu,
Artūrs Kučs,
Mateja Đurović,
András Jakab,
Canòlic Mingorance Cairat,
Vahe Grigoryan,
Hugh Mercer*, judges*,

and Abel Campos, *Deputy Registrar,*

Having deliberated in private on 25 March 2026 and 2 July 2026,

Delivers the following judgment, which was adopted on the latter date:

PROCEDURE

1. The case originated in an application (no. 2170/24) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Mehmet Osman Kavala ("the applicant"), on 18 January 2024.

2. The applicant was represented by Mr Philip Leach, Professor of Human Rights Law, Middlesex University, and Ms Başak Çalı, Professor of International Law, Oxford University. The Turkish Government ("the Government") were represented by their Co-agent, Mr Abdullah Aydın, Head of the Human Rights Department at the Ministry of Justice.

3. The application was allocated to the Second Section of the Court, pursuant to Rule 52 § 1 of the Rules of Court. On 21 March 2024 the President of the Section decided to apply Rule 41 and grant the applicant's request for priority treatment of the application. The Government were given notice of the application on the same date.

4. On 16 December 2025 a Chamber of the Second Section decided to relinquish jurisdiction in favour of the Grand Chamber (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined in accordance with Article 26 §§ 4 and 5 of the Convention and Rule 24.

6. The applicant and the Government each filed written observations on the merits of the case (Rule 59 § 1).

7. The Council of Europe Commissioner for Human Rights ("the Commissioner for Human Rights") exercised his right to intervene in the proceedings and submitted written comments (Article 36 § 3 of the Convention and Rule 44 § 2).

8. In addition, third-party submissions were received from the European Criminal Bar Association, the Rights Defenders Initiative (RDI), the Joint Platform for Human Rights (*İnsan Hakları Ortak Platformu* – İHOP), the Media and Law Studies Association (MLSA), and, jointly, from the Association of European Administrative Judges (AEAJ), the European Association of Judges (AEJ), the "Judges for Judges" Foundation and *Magistrats européens pour la démocratie et les libertés* (MEDEL), which had been granted leave by the President of the Grand Chamber to intervene in the written procedure (Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court). Written observations were also submitted, jointly, by the Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists, and, jointly, by the Clooney Foundation for Justice and the University of Amsterdam's Fair Trials Clinic, TrialWatch and Professor Göran Sluiter, and by the Union of Turkish Bar Associations (TBB), REDRESS and the Association for Freedom of Expression (*İfade Özgürlüğü Derneği*), which had been granted leave to intervene in the procedure before the Chamber (Rule 44 § 3), this leave having been maintained for the procedure before the Grand Chamber.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 25 March 2026.

There appeared before the Court:

(a) *for the Government*

Mr A. AYDIN, *co-Agent,*
Mr A.E. BOZBAYINDIR,
Ms B.B. ŞENOCAK,
Mr Ş. TAŞ, *Advisers;*

(b) *for the applicant*

Mr P. LEACH, *Counsel,*
Ms B. ÇALI,
Mr D.T. AYTÖRE,
Ms E. DEMIRALP BEKIR, *Advisers;*

(c) *for the Council of Europe Commissioner for Human Rights*

Mr M. O'FLAHERTY, *Commissioner for Human Rights,*

Ms E. BIĆAKČIĆ, *Deputy to the Director,*
Ms K. KIRCHBERGER, *Adviser.*

The applicant's spouse was also present at the hearing.

The Court heard addresses by Mr Aydın, Mr Bozbayındır, Mr Leach and Ms Çalı, as well as their replies to questions put by judges. Those appearing before the Court submitted further written replies within the time-limit set by the President before the close of the hearing (Rules 71 § 1 and 38 § 1).

INTRODUCTION

10. The case concerns the measures taken against the applicant, who considers them to have been imposed as a result of his activities and public stances as a human-rights defender. It originates in the events following the Court's judgment of 10 December 2019 (*Kavala v. Turkey*, no. 28749/18, 10 December 2019), after which the applicant continued to be deprived of his liberty before being sentenced to aggravated life imprisonment. The applicant alleges violations of Articles 3, 5, 6, 7, 10, 11 and 18 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. General overview

11. The applicant, a businessman, is a human-rights defender in Türkiye. He contributed to the setting-up of numerous non-governmental organisations ("NGOs") and civil-society movements which are active in the areas of human rights, culture, social studies, historical reconciliation and environmental protection (see *Kavala*, cited above, § 12).

12. The applicant has been deprived of his liberty, without interruption, since 18 October 2017, that is, for more than eight and a half years. He was initially suspected of having committed two offences: attempting to overthrow the government through force and violence, within the meaning of Article 312 of the Criminal Code, in relation to the Gezi Park events (see paragraphs 17-21 below); and attempting to overthrow the constitutional order, within the meaning of Article 309 of the Criminal Code, in relation to the violent attempted *coup d'état* of 15 July 2016, which led to the declaration of a state of emergency in Türkiye from 20 July 2016 to 18 July 2018 (see *Kavala*, cited above, §§ 24-28). On 11 October 2019 the applicant was granted release pending trial in respect of the charge under Article 309 of the Criminal Code; however, that decision did not result in his actual release, as he remained in pre-trial detention in respect of the charge under Article 312 of the Criminal Code.

13. On 18 February 2020 the applicant was acquitted of the charge in relation to the Gezi Park events (Article 312 of the Criminal Code). However, the decision to release him pending trial, delivered on the same date, did not lead to his actual release. He was taken into police custody on the same date, then, on the following day, he was placed in pre-trial detention on suspicion of attempting to overthrow the constitutional order (Article 309 of the Criminal Code; see paragraphs 30-31 below). On 9 March 2020 the applicant was again placed in pre-trial detention, this time for military or political espionage, an offence set out in Article 328 of the Criminal Code (see paragraph 33 below). On 22 January 2021 the Istanbul 3rd Regional Court of Appeal quashed the acquittal judgment of 18 February 2020 (see paragraph 38 below). On 25 April 2022 the Istanbul 3rd Assize Court convicted the applicant of the charge under Article 312 of the Criminal Code in relation to the Gezi Park events and, pursuant to that provision, sentenced him to aggravated life imprisonment; it also ordered that he continue to be held in detention in relation to that charge. However, it acquitted him on the charge of miliary or political espionage (Article 328 of the Criminal Code) and ordered his release in that connection. As to the charge under Article 309 of the Criminal Code in relation to the attempted *coup d'état*, the Assize Court considered that it was absorbed by the conviction of 25 April 2022 (see paragraphs 47-57 below). That conviction was upheld on appeal on 28 December 2022 (see paragraph 63 below), then on an appeal on points of law on 28 September 2023 (see paragraphs 65-68 below).

14. The applicant's pre-trial detention prior to 2 February 2022 – the date on which the case was referred to the Court by the Committee of Ministers (see paragraphs 15 and 69 below) – gave rise to two judgments by the Court. In its judgment of 10 December 2019 (cited above), the Court found violations of Article 5 §§ 1 and 4 and of Article 18, taken in conjunction with Article 5 § 1 of the Convention, on account of the lack of reasonableness of the suspicions justifying the applicant's initial and continued pre-trial detention in relation to the offences set out in Articles 309 and 312 of the Criminal Code (see paragraphs 27-29 below).

15. The above-mentioned judgment having become final on 11 May 2020, it was transmitted to the Committee of Ministers under Article 46 § 2 of the Convention for supervision of its execution. On 2 February 2022, under Article 46 § 4, the Committee of Ministers adopted an Interim Resolution by which it decided to refer to the Court the question whether the Republic of Türkiye had failed to fulfil its obligation under Article 46 § 1 of the Convention to abide by the above-cited *Kavala* judgment. Following that referral, the Court delivered a judgment on 11 July 2022, in which it held that Türkiye had failed to fulfil its obligation (*Kavala v. Türkiye (infringement proceedings)* [GC], no. 28749/18, 11 July 2022 – see paragraph 69 below).

16. The relevant facts preceding the applicant's conviction on 25 April 2022 have already been set out in detail in the *Kavala* (cited above, §§ 11-64)

and *Kavala (infringement proceedings)* (cited above, §§ 8-56) judgments, both cited above. Subsequent developments, particularly those occurring after the *Kavala (infringement proceedings*) judgment, are set out in further detail below. In so far as they are relevant to the present case, the facts may be summarised very briefly as follows.

B. The Gezi Park events

17. The Gezi Park events, which took place between May and September 2013, originated in opposition to an urban redevelopment project (adopted in 2011) for Taksim Square; the plans included the destruction of Gezi Park, one of the few green spaces in the centre of Istanbul, in order to build a shopping centre. From 27 May 2013 onwards, environmental activists and local residents occupied the park in an attempt to prevent work on this project from beginning. On 31 May 2013 a violent police operation to remove the persons occupying the park marked a turning-point and led to a rapid expansion of the protest movement. The demonstrations then escalated in June and July 2013 and spread to several towns and cities in Türkiye, taking the form of assemblies and demonstrations, some of which led to violent clashes between protestors and the police. Violent groups also mingled with the demonstrators and committed acts of violence and vandalism. According to the information submitted by the Government, those events, which continued until September 2013, involved several million participants; four civilians and two police officers were killed, and thousands of people, both civilians and members of the security forces, were injured. The authorities described the movement as an insurrection backed by terrorist organisations and instituted numerous criminal proceedings (for more details, see *Kavala*, cited above, §§ 15-22).

18. In the *Kavala* case (cited above, §§ 7, 20-22), the then Council of Europe Commissioner for Human Rights, intervening in the procedure, submitted written observations about the Gezi events. She indicated that her office had direct knowledge of the events, as her predecessor had visited Türkiye from 1 to 5 July 2013 and had met both civil-society actors and State officials. The conclusions from that visit were documented in a report focusing on the conduct of law-enforcement officials in Türkiye (CommDH(2013)24, 26 November 2013). In particular, the Commissioner considered that the movement's growth was primarily due to the excessive use of force against initially peaceful protestors and to the lack of independent media coverage at the beginning of the protests. She noted that the movement had brought together a wide range of actors from civil society, coordinated in large part by the Taksim Solidarity platform, of which the applicant was not a member. Lastly, she reported on serious and credible allegations of human-rights violations committed by law-enforcement officials, the majority of

which had not been effectively investigated on account of a long-standing pattern of impunity.

19. Before the Grand Chamber, the parties continued to disagree as to the classification and interpretation of those events.

20. According to the Government, as the Third Criminal Division of the Court of Cassation held in its judgment of 28 September 2023 (see paragraphs 65-68 below), the Gezi Park events were not a spontaneous response to calls for protection of the park, but the culmination of a process that had been prepared since 2011. They argued that this process had been based on the creation of associative groups such as Taksim Solidarity and the Taksim Platform, the coordinated use of social media and alleged support from foreign actors, including the OTPOR/CANVAS movements and various cultural or online initiatives, which, in their view, had contributed to transforming a local protest into a national movement of political opposition (see *Kavala*, cited above, § 49). The Government further contended that the operational phase began on 27 May 2013 and quickly spread across the entire country; Taksim Solidarity's repeated calls on social media had resulted in mass gatherings, then in demonstrations of force and acts of violence, such as setting up barricades, attacks on the police, the throwing of stones and Molotov cocktails, damage to public and private property, the blocking of main roads and attacks on buildings and vehicles, particularly in the Taksim district and near the Prime Minister's offices in Dolmabahçe, in the Beşiktaş district. They emphasised the scale of the human and material damage, the high cost to the State and the alleged presence of symbols of illegal or terrorist organisations in certain gatherings. Taken together, those elements were sufficient, in their view, to enable the movement to be described as an attempt at destabilisation, aimed at overthrowing the government through a violent uprising.

21. The applicant disputed the Government's version of the facts surrounding the Gezi Park events, which he considered to be based on a conspiracy-based narrative, replicated in the indictments and domestic court decisions, which had resulted in the imposition of an aggravated life sentence, and was at odds with the findings reached by the Court in its 2019 and 2022 judgments. He alleged that the Government's version was not based on any identifiable source, in contrast to his own account of the events, which, in his submission, was substantiated by reports from the Turkish Institution of Human Rights and the Council of Europe Commissioner for Human Rights. According to those sources, the demonstrations began on 27 May 2013 in response to the works in Gezi Park, and spread primarily as a result of the excessive use of force by the police, entailing multiple violations of fundamental rights. The applicant also accused the Government of minimising the largely peaceful nature of the demonstrations and of failing to mention the attempts to establish dialogue with the authorities, especially through meetings with the political leaders at the time and the subsequent

appeal for de-escalation by the Taksim Solidarity platform. The applicant also complained of the total absence of a comprehensive and independent investigation into the police violence, either by State bodies or by Parliament. In this connection, he argued that in 2013 an official request for a parliamentary inquiry was blocked by the governmental majority, and the only prosecutions brought were against individual police officers. According to the applicant, a report by the Turkish Institution of Human Rights recognised that the police interventions had given rise to credible allegations of human-rights violations and listed several deaths during the demonstrations, including the accidental death of a police officer while he was chasing demonstrators and several deaths among the demonstrators as a result of shots fired by the police, blows, incidents during the demonstrations or as a result of the use of tear-gas grenades; there were also allegations of excessive use of tear gas.

C. Summary of the facts prior to the applicant's acquittal

1. *Mr Kavala's arrest and placement in pre-trial detention prior to the first charges against him on 19 February 2019*

22. On 31 October 2017, following his arrest on 18 October 2017 – that is, more than four years after the Gezi Park events – on the basis of Articles 309 and 312 of the Criminal Code, the applicant was questioned by the Istanbul police. The interview focused on the events in question, his relations with journalists, academics, human-rights defenders and members of NGOs, and on his presumed contacts with H.J.B., an American academic who was suspected of having taken part in the attempted coup of 15 July 2016. On 1 November 2017 the Istanbul Magistrate's Court ordered that the applicant be placed in pre-trial detention with immediate effect, a decision that was confirmed by the second magistrate's court on 13 November 2017, then regularly re-examined and maintained until 4 March 2019, the date on which the Assize Court accepted the indictment of 19 February 2019, based on Article 312 of the Criminal Code (see *Kavala*, cited above, §§ 29-40). On 5 February 2019 it was decided to sever the criminal investigation concerning the charge under Article 309 of the Criminal Code from the investigation concerning the charge under Article 312 of the Criminal Code. In another decision of the same date, it was decided that the offence under Article 309 of the Criminal Code would be investigated separately.

2. *The first charges against the applicant on 19 February 2019 and the sequence of events until the second set of charges were brought on 28 September 2020*

(a) Indictment of 19 February 2019

23. On 19 February 2019 the Istanbul public prosecutor's office filed a bill of indictment in respect of Mr Kavala and 15 co-defendants, essentially on the charge of attempting to overthrow the government by force and violence (Article 312 of the Criminal Code), in relation to the Gezi Park events, and on charges of various public-order offences (for a detailed summary of this indictment, see *Kavala*, cited above, § 47-55).

24. According to the indictment, the applicant had played a central role in organising, coordinating and providing support for the Gezi Park events, with a view to generalising the protests and creating a climate of disorder that would compel the Government to resign, which amounted to an attempt to overthrow the government within the meaning of Article 312 of the Criminal Code. He was accused of having acted as leader and coordinator of a structure linked to the Open Society Foundation and to the limited company Anadolu Kültür, contributing to the movement's geographical expansion and the promotion of acts of "civil disobedience", exercising an influence on certain associative platforms involved in the demonstrations, and providing logistical and communications support to the movement, particularly by making premises available for meetings and through media initiatives. He was also accused of having sought out international support and maintained contacts with foreign actors and European institutions in order to increase the pressure being applied to the Turkish authorities; the indictment also referred to links with networks that were presented as specialising in exporting insurrectional methods.

25. To substantiate those accusations, the prosecutor's office relied in particular on transcripts of telephone conversations, reports of physical surveillance, a report from MASAK (the Financial Crimes Investigation Committee) on financial data concerning the activities of the limited company Anadolu Kültür, information about the applicant's foreign travels and international contacts, and witness statements and media sources. It referred to this body of evidence to substantiate its allegations that there had been a coordinated action, aimed at overthrowing the government by force and violence, within the meaning of Article 312 of the Criminal Code.

(b) Constitutional Court's judgment of 22 May 2019

26. On 22 May 2019 the Turkish Constitutional Court examined an individual application lodged with it by the applicant to challenge his pre-trial detention. In a judgment published on 28 June 2019, it held, by a majority, that there had been no violation of Article 19 of the Constitution in respect of the lawfulness of that measure. It considered that the material in the case file

– especially certain telephone conversations, the logistical and financial assistance provided to the demonstrators and the applicant's involvement in the organisation and promotion of the Gezi Park events – was sufficient to justify the existence of strong suspicions as to his liability for violent acts aimed at overthrowing the Government. With regard to the complaint that no hearing had been held for more than seventeen months during the examinations of his applications for release, the Constitutional Court declared it inadmissible for non-exhaustion of remedies, holding that the applicant had available a compensatory remedy (see *Kavala*, cited above, §§ 57-60).

(c) Judgment of the European Court of Human Rights of 10 December 2019

27. In its judgment of 10 December 2019, the Court carried out a thorough analysis of the charges against the applicant in the light of the requirements of Article 5 § 1 (c) of the Convention, in order to determine whether they were such as to justify his initial and continued pre-trial detention. Its assessment was based, first, on the decisions of the domestic courts which had ordered and extended the applicant's detention, but also on the conclusions of the Constitutional Court's judgment on the lawfulness of that detention, in which that court had also had regard to the bill of indictment (ibid., § 137).

28. The Court noted, in particular, that the bill of indictment presented the Gezi Park events as an insurrection organised secretly by an alleged *sui generis* structure within civil society, led by the applicant with the support of foreign actors. It noted, however, that the facts relied on consisted essentially of lawful and non-violent activities, or fell within the exercise of the rights guaranteed by Articles 10 and 11 of the Convention, and that they had been associated, in an unverifiable manner, with an attempt to overthrow the Government. It noted that the suspicions were based mainly on rather inconclusive witness statements, telephone conversations, meetings with journalists, NGOs and foreign contacts, and on activities occurring after the Gezi Park events, with no direct link to them. The Court further noted the absence of any new evidence, despite the considerable lapse of time between the events of 2013 and the applicant's arrest in October 2017. It concluded that there were no concrete facts or elements giving rise to a reasonable suspicion that the applicant had attempted to overthrow the government by force and violence and that, accordingly, his initial and continued detention under Article 312 of the Criminal Code had not been based on a reasonable suspicion (ibid., §§ 145-53).

29. In the same judgment, the Court also examined the case under Article 18, taken in conjunction with Article 5 § 1, and held that there had been a violation of those provisions. In doing so, it considered, *inter alia*, that it had been established beyond reasonable doubt that the applicant's initial and continued detention had pursued an ulterior purpose, in breach of Article 18 of the Convention, namely, to silence him as a human-rights

defender, and it concluded that there had been a violation of Article 18, taken in conjunction with Article 5 § 1 of the Convention (see *Kavala*, cited above, §§ 222-32).

(d) The applicant's acquittal on 18 February 2020

30. In a judgment of 18 February 2020, the Istanbul 30th Assize Court acquitted the applicant and his eight co-defendants of the charge of attempting to overthrow the government (Article 312 of the Criminal Code) in relation to the Gezi Park events and ordered his release pending a final judgment. In its reasoning, it noted, first, that the transcripts of telephone conversations that had been added to the case file were not legally valid evidence, and, secondly, that there was no evidence to substantiate the claim that the applicant had financed the Gezi Park events and that the items provided by him had been used for violent purposes. The parts of the judgment concerning the assessment of evidence read as follows:

> "1. (...) After examination of the actual content of the case file, it appears that, at the investigation stage of our case, 53 decisions to intercept communications were issued under Article 135 of the Code of Criminal Procedure. The first wiretapping order, dated 18 June 2013, was issued in respect of the offence of 'forming and leading a criminal organisation', as set out in Article 220 of the Criminal Code, and not in respect of a 'crime against the Government', the offence set out in Article 312 of the same Code. It was only in the subsequent applications and decisions extending the duration of the telephone tapping that Article 312 of the Criminal Code was also invoked. On those dates, however, the offence of 'crime against the Government' was not one of the offences listed in Article 135 § 8 of the Code of Criminal Procedure as a lawful basis for interception of communications. This offence was included in the list of offences that could justify lawful telephone tapping only on 2 December 2014, and no telephone tapping order was issued [in respect of the applicant] after that date. In these circumstances, the tapped recordings must be regarded as evidence obtained in breach of the law and of his rights. In accordance with Article 206 § 2 (a), Article 217 § 2 and Article 230 § 1 (b) of the Code of Criminal Procedure, in the light of the Court of Cassation's settled case-law ... and having regard to the principle that 'the fruit of the poisoned tree is also poisoned', it is accepted that the recordings in the bill of indictment constitute prohibited evidence. In the context of the case file, the orders for surveillance by technical means adopted at the investigation stage on the basis of Article 140 of the Code of Criminal Procedure, based on the same unlawful method, are also considered to be illegal, for the same reasons.
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> ...
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> 5. As regards the allegation that the accused, Mehmet Osman Kavala, was the financier of the Gezi Park events, the case file indicates that a MASAK report was submitted to the court. Examination of that report (drawn up by MASAK on 18 January 2018) reveals that no evidence has been adduced to establish that the Gezi Park events were funded by the Open Society Foundation, or by the Anadolu Kültür limited company. It was noted that [this company], of which the accused Mehmet Osman Kavala is an associate and member of the board of directors, was incorporated as a limited company in accordance with the Commercial Code, that the company decided, by vote of its general assembly, to operate as a non-profit entity and that any income received was to be used to organise cultural activities. It is also established that the

financial transfers referred to in the report cover the period from 2005 to 2016, this data being presented in the form of tables. However, no explanation has been provided, as asserted in the bill of indictment, concerning the existence of any transfer made before or after the Gezi Park events, or concerning the identity of the beneficiaries or the manner in which any funding was provided. The findings were limited to abstract and speculative statements, with MASAK expressly stating that the assessment of evidence fell within the competence of the public prosecutor's office. Furthermore, the bill of indictment does not contain any findings or analysis linking those entities to any terrorist offence or organisation. Accordingly, the allegation that the Gezi Park events received funding appears to be purely abstract and devoid of any tangible basis (*iddianın soyut ve havada kaldığı*). In addition, although it is argued in the bill of indictment that the accused Mehmet Osman Kavala provided funding to persons participating in the Gezi Park events, had bank accounts opened to supply equipment for the actions organised in this context, and provided concrete support in the form of tables, sound systems or food aid – evidence which was allegedly established on the basis of telephone-tapping recordings – it appears, however, that those recordings, which we consider to have been unlawfully obtained, contain no specific content relating to the alleged facts. Nor has it been possible to identify ... any bank account opened for that purpose, or to produce information or documents showing that the above-mentioned items were used in connection with acts of violence.

...

In the light of the reasons set out above and accepted by this bench, and after examining the case as a whole, it has been found that, independently of the unlawfully obtained telephone-tapping recordings, which could not legally be taken into consideration as the basis for the decision, the other evidence in the file is not sufficient to establish, in respect of the defendants against whom a decision has been issued, the existence of sufficient legal, concrete and conclusive evidence to justify a conviction. In particular, it has not proved possible to gather evidence showing that the defendants had, by leading, directing or inciting 'fringe groups' or 'illegal left-wing organisations', committed acts involving force and violence of such gravity as to impair the Government's capacity to act and breach public order. Accordingly, ... it has been decided to acquit each of the defendants [including] Mehmet Osman Kavala, ... of the above-mentioned offences."

31. This acquittal did not, however, result in the applicant's release: he was arrested on the same day in the context of the investigation into acts punishable under Article 309 of the Criminal Code, related to the attempted *coup d'état* of 15 July 2016, then placed in pre-trial detention in relation to that charge on the following day (see paragraphs 12 and 13 above; see also *Kavala*, cited above, §§ 25-26).

(e) Disciplinary proceedings against the judges who had acquitted the applicant

32. On 19 February 2020 the Council of Judges and Prosecutors (CJP) instituted a preliminary investigation and then opened a disciplinary investigation against the three judges of the Istanbul 30th Assize Court who had acquitted the applicant and ordered his release on 18 February 2020, specifically in respect of the charge under Article 312 of the Criminal Code. According to information provided by the Government, the purpose of this investigation was to examine the inconsistencies found between the acquittal

decision and the previous decisions ordering the applicant's continued pre-trial detention. The CJP observed that, at several previous hearings, the same judges had held that the evidence from the interception of communications and the technical and physical surveillance was lawful, before describing this evidence as unlawful in the reasoning of the acquittal judgment, without any satisfactory explanation being provided. It considered that this discrepancy represented a failing in their duties. The disciplinary investigation also concerned the conduct of the presiding judge, who was accused of having shared information about the case with third parties and of having expressed his opinion on the outcome of the trial in advance, in breach of the principles of independence, impartiality and confidentiality enshrined in the Declaration of Professional Conduct for the Turkish judiciary. On the basis of concurring witness statements, the investigation report concluded that such conduct was liable to undermine public confidence in the judiciary and justified the imposition of disciplinary sanctions on that account. In response to a question posed at the hearing, the Government indicated that no disciplinary sanctions had been imposed on the judges who acquitted the applicant and that the disciplinary investigation opened by the CJP against them was still ongoing; in the meantime, they continued to exercise their functions.

D. The second set of charges brought against the applicant

1. *The applicant's continued detention on the basis of new charges*

33. On 9 March 2020 the public prosecutor's office requested that the applicant be placed in pre-trial detention on a charge of military or political espionage (Article 328 of the Criminal Code), relying on evidence relating to H.J.B. (see paragraph 22 above) and communications data; this request was granted by the magistrate's court on the same day. On 20 March 2020 the same court ordered that the applicant be released pending trial in the context of the investigation under Article 309 of the Criminal Code, on the grounds, in particular, that the maximum duration of pre-trial detention at the investigation stage – namely two years, as set out in Article 102 of the Code of Criminal Procedure – had been exceeded; however, that decision remained inoperative on account of the applicant's continued detention on the basis of Article 328 of the Criminal Code (see *Kavala (infringement proceedings)*, cited above, §§ 31-34).

34. Between March and August 2020 the applicant's pre-trial detention was reviewed several times and extended, with the judges citing concrete evidence, the seriousness of the offences, the risk of his absconding and the inadequacy of the alternative measures.

2. *Indictment of 28 September 2020*

35. On 28 September 2020 the Istanbul public prosecutor's office lodged an indictment against the applicant, charging him with attempting to overthrow the constitutional order (Article 309 of the Criminal Code) and military or political espionage (Article 328 of the Criminal Code). It alleged, in essence, that he had acted in collaboration with H.J.B. (see paragraph 22 above), who was presented as being linked to foreign intelligence services, and relied, in particular, on telephone contacts, foreign travel, meetings after the attempted coup of 15 July 2016, and the alleged use of NGOs and civil-society activities for illegal purposes. According to the public prosecutor's office, these activities were part of a strategy to influence Turkish society, to create hotbeds of mobilisation and to prepare the ground for actions against the government, particularly in the context of the Gezi Park events. With more specific regard to the charges of espionage and attempting to overthrow the constitutional order, the prosecutor's office submitted that the applicant, in conjunction with national and international actors, had collected and analysed social, cultural and political information, financed or supported various cultural projects and productions, and maintained relations with journalists, researchers and members of think tanks abroad, with the alleged aim of undermining the State and promoting the division of society. It further considered that those activities, carried out under the guise of defending fundamental rights, were in reality aimed at creating conditions that were favourable to mass protest movements and at supporting, directly or indirectly, organisations considered to be terrorist, and also participating, upstream, in the preparation of the attempted coup of July 2016 (see *Kavala (infringement proceedings),* cited above, § 36).

36. On 8 October 2020 the 36th Assize Court allowed the indictment and ordered the applicant's continued pre-trial detention; it subsequently confirmed that measure on several occasions.

3. *The Constitutional Court's judgment of 29 December 2020*

37. On 4 May 2020 the applicant lodged a second individual application with the Constitutional Court, challenging his placement in pre-trial detention as ordered on 9 March 2020 (see paragraph 33 above). In a judgment adopted on 29 December 2020 (published on 23 March 2021), the Constitutional Court held, by a majority (eight votes to seven), that there had been no violation of his right to freedom with regard to the lawfulness and duration of his pre-trial detention. Basing its conclusion on the evidence put forward by the prosecutor's office – in particular, the alleged links with H.J.B., the interceptions of communications, the digital material seized and the indictment – it held that that those materials were sufficient to establish strong suspicions of espionage. It also emphasised the specific nature of the espionage offences, characterised by secrecy and the difficulty of gathering

evidence, which could justify an adapted requirement of evidentiary standards at the initial stage of the investigation and when placing the individual concerned in pre-trial detention (for a summary of this judgment and the dissenting opinions, see *Kavala (infringement proceedings)*, cited above, §§ 59-65).

4. Setting aside of the acquittal judgment of 18 February 2020

38. On 22 January 2021 the 3rd Regional Court of Appeal quashed the acquittal of 18 February 2020 (see paragraph 30 above) and remitted the case to the Istanbul 30th Assize Court. In the meantime, on 5 February 2021, the Istanbul 36th Assize Court decided to join the proceedings pending before it to those pending before the 30th Assize Court, thus terminating the proceedings before the 36th Assize Court.

39. On 2 August 2021 the Istanbul 30th Assize Court ordered that the proceedings concerning the applicant be joined with those pending before the Istanbul 13th Assize Court, as part of the case known as the "*Çarşı* proceedings". In those proceedings, which had been opened on 11 September 2014, thirty-five persons were accused, *inter alia*, of attempting to overthrow the government by force and violence in connection with the Gezi Park events (Article 312 of the Criminal Code). All had been acquitted on 29 December 2015. On 28 April 2021 the Court of Cassation quashed that acquittal and requested that those proceedings be joined to those that had been opened before the Istanbul 30th Assize Court. They were ultimately joined to those of the applicant, before being severed again (see paragraph 42 below). They culminated in the defendants' acquittal in a judgment of the 13th Assize Court, delivered on 23 December 2024 (see paragraph 75 below).

40. On 8 October 2021 the applicant presented his initial defence submissions, denying the charges against him and arguing that the *actus reus* (material element) and *mens rea* (mental element) of the alleged offences had not been established. At the close of the hearing, the 13th Assize Court ordered the applicant's continued detention, finding, particularly on the basis of the Historical Traffic Search (HTS) records (data including telephone numbers, and the duration, time and localisation of calls), digital analysis and the MASAK report, that there was specific evidence indicating strong grounds of suspicion and that judicial supervision measures would be insufficient.

41. On 26 November 2021 and 17 January 2022 the Istanbul 13th Assize Court held hearings in the presence of the applicant's lawyers. On both occasions it ordered that the applicant should remain in detention.

42. At a hearing on 21 February 2022, the 13th Assize Court heard the defence submissions again. It also decided to sever the so-called "*Çarşı*" proceedings, which had been joined on 2 August 2021 (see paragraph 39 above) from those relating to the applicant. It ordered the opening of a separate case in respect of the thirty-five persons concerned and that

proceedings be continued against them in the context of that new case. In the reasoning of its decision, it noted that the applicant was being tried as a detained person in the context of the case before it, that the hearing of the other accused persons' defence submissions had been completed and that the points raised in the Court of Cassation's judgment concerning the thirty-five defendants whose case had been severed had not yet been fully examined. At the same hearing it dismissed the call for withdrawal of the entire judicial bench, holding that this request was aimed at extending the proceedings.

43. On 4 March 2022 the public prosecutor's office issued its opinion, concluding that the acts attributed to the applicant, as described in the indictments of 19 February 2019 and 28 September 2020, constituted the offence of attempting to overthrow the government by force and violence, within the meaning of Article 312 of the Criminal Code. It requested his conviction and continued detention.

44. At the hearing of 21 March 2022 the applicant and his lawyers submitted their observations in response to the public prosecutor's opinion. On that occasion they requested, in particular, that two defence witnesses, namely former ministers who had been in office at the material time, S.E. and N.Ç., be heard, arguing that their statements were likely to shed light on the nature of the applicant's institutional contacts during the Gezi Park events and to corroborate his version of events. They also requested various additional investigative measures. At the same hearing, however, the 13th Assize Court dismissed all those requests, on the grounds that they would add nothing to the proceedings.

45. On 22 April 2022 the applicant submitted his final arguments, in which he denied any involvement in the organising, financing or leadership of the Gezi Park events and sought an acquittal. He argued, in substance, that the indictment was based on an essentially narrative and speculative interpretation, lacking a sufficient factual and evidential basis. In his view, there was no objective evidence in the case file to demonstrate the existence of a plan, a hierarchical organisation or a coordination mechanism aimed at overthrowing the government or obstructing its work. He argued that activities which were part of civil society's normal and lawful operations, such as cultural projects, public meetings, institutional exchanges and international contacts, had been retrospectively reclassified as criminal acts. Such reclassification undermined the principle of legal certainty and the requirement of the foreseeability of criminal law. He considered that no direct or indirect link had been established between him and the acts of violence and destruction, or the clashes which had occurred during the Gezi Park events. He emphasised that he could not be held liable for any order, instruction or incitement to violence and that there was no evidence in the file to suggest that he had taken part, even indirectly, in such acts. He added that the alleged offences presupposed the existence of a specific mental element, and argued that there was no evidence to that effect in the file.

In the applicant's submission, his actions had been part of a peaceful, public and transparent civic commitment, incompatible with the criminal intent attributed to him. He also argued that the financial information in the file, including accounting records and official audits, did not disclose any illegal financial transfers. In this connection, he pointed out that the funds used by the Anadolu Kültür company had been allocated exclusively for duly documented cultural activities, unrelated to illegal or violent actions. He alleged that the accusation against him had been based on actions that were not at all incriminating, such as telephone conversations taken out of context, lawful foreign travel and commonplace institutional relations. Taken alone or together, those elements could not, in his view, meet the evidentiary threshold required in criminal cases. Lastly, the applicant submitted that the continuation of the proceedings despite the absence of new evidence, the internal contradictions in the indictment and his prolonged detention revealed a misuse of the criminal law, incompatible with the guarantees provided for by the Constitution and the Convention. He concluded that the proceedings brought against him had been based on an arbitrary reclassification of legitimate activities and did not satisfy the Convention requirements of legality, necessity and proportionality.

E. Sentencing of the applicant to life imprisonment

1. Judgment of 25 April 2022

46. At the hearing of 25 April 2022 the applicant submitted a request for the withdrawal of M.B., one of the members of the three-judge bench of the Assize Court, and of the entire bench. With regard to M.B., he explained that it appeared from the pleadings of one of the lawyers that the judge in question had close ties to the ruling party and he requested, for that reason, that M.B. be removed from the bench.

47. On the same day, at the close of the hearing, the 13th Assize Court acquitted the applicant of the charge of espionage (see paragraph 35 above), found him guilty of the charge under Article 312 of the Criminal Code in relation to the Gezi Park events and sentenced him to aggravated life imprisonment. It also dismissed the request for the withdrawal of M.B. and of the entire judicial bench, holding that this request was aimed at extending the proceedings. It further ordered that the applicant remain in pre-trial detention.

48. In its judgment, the Assize Court, basing its decision on the indictments of 19 February 2019 (see paragraphs 23-25 above) and 28 September 2020 (see paragraph 35 above), repeated the prosecution's argument that the Gezi Park events, presented as part of a pattern of international movements including the "colour revolutions" and the "Arab Spring", had been planned and directed by the applicant with the support of foreign actors, and through the Anadolu Kültür limited company and

structures linked to the Open Society Foundation. After a global assessment of the evidence in the case file, it concluded that the applicant had been involved in organising, planning, leading and financing the demonstrations and that the violence which occurred, in view of its scale and its human and material consequences, had amounted to use of the force and violence reaching the level required to constitute the offence set out in Article 312 of the Criminal Code. Holding that the events in question had reached the execution phase, given the concrete danger they had posed to the constitutional order and the exercise of governmental functions, it found that, in the context of collective action, criminal liability could extend beyond the perpetrators to those individuals who had played a strategic role, that is, who had been involved in the planning, organisation and leadership of the Gezi Park events, or had made an essential contribution to them.

49. The Assize Court referred to all the evidence relied on by the prosecutor's office in the indictments, attaching particular weight to the MASAK report of 18 January 2018, which listed the banking operations carried out to provide financial support to certain legally established NGOs (for further details on this report, see *Kavala*, cited above, §§ 51 and 227). It noted that all of the evidence gathered – including interception of communications, surveillance measures, documented exchanges, and information relating to travel, meetings, financial transfers and communication activities – confirmed that the applicant had played a central and structuring role in the organising, planning, leadership, financing, coordination, media coverage and internationalisation of the Gezi Park events, pursuing, in its view, a political purpose that went beyond the publicly declared objectives.

50. Assessing those elements as a whole, the Assize Court found, first, that the alleged links with foreign actors had been made out. It noted, in particular, the applicant's contacts with international bodies, including the Open Society Foundation, his foreign trips, his participation in international meetings and his supposed role as a relay in Türkiye, in particular through financial transfers. It considered that the protest methods observed during the Gezi Park events corresponded to the methods developed by those organisations.

51. The Assize Court then found that the applicant had exercised a decisive influence over central structures in the movement, such as the Taksim Platform, Taksim Solidarity, and in the coordination of the forums, although he had not officially been a member of them. It noted that the Taksim Platform was largely controlled by the co-defendant M.Ö., with whom the applicant had a long-standing close professional relationship within the Anadolu Kültür limited company. It held that decisions within the Taksim Platform were taken after consultation with the applicant, and that influential figures in Taksim Solidarity, in particular Şerafettin Can Atalay (see paragraphs 86-89 below) and Tayfun Kahraman (see paragraphs 90-96

below), had been in contact with him. It further noted the use of premises belonging to the applicant, or to Anadolu Kültür, for meetings and for coordination and training purposes. It also noted that the applicant had provided logistical, material and financial support for the events, responding to needs expressed by the organisers and participants, financing certain activities, facilitating the opening of bank accounts, supplying equipment such as masks, goggles and other items, and providing financial support to the actors involved, particularly through the intermediary of related organisations.

52. The Assize Court drew attention to a strategic and political vision, attributed by it to the applicant on the basis of intercepted conversations about the movement's political consequences, its expansion, politicisation and orientation towards specific electoral objectives, particularly with a view to local elections and a weakening of electoral support for the ruling party. It again noted that the applicant had taken steps to obtain international support for the demonstrations and increase the pressure being exerted on the Republic of Türkiye. It noted that he had been in contact with foreign officials, international institutions and organisations, especially in Europe, Germany and the United States, and that he had sought to bring about the suspension or prohibition of tear-gas exports to Türkiye. It noted that he had attempted to mobilise international actors, including the Commissioner for Human Rights, and had been involved in the drafting and strategic rewording of letters and communications, aimed at presenting the Gezi Park events from an angle that was unfavourable to Türkiye on the international stage.

53. The Assize Court also considered that the applicant had contributed to the movement's sustainability and structure, in particular by establishing forums to prolong the mobilisation and extend its symbolic and geographical scope, and by organising training courses to develop the capacity for long-term self-organisation, activities that had taken place in premises belonging to him or linked to Anadolu Kültür. Lastly, it noted his role in producing, disseminating and promoting media coverage of the events, through the collection and use of visual content, the production and dissemination of documentaries, and by organising international exhibitions and maintaining extensive contacts with media, cultural and economic actors.

54. In order to establish the use of force and violence imputable to the applicant, the Assize Court analysed the case in several stages. It concluded, first, on the basis of all the evidence adduced, that the applicant had been involved in organising, planning, leading and financing the Gezi Park demonstrations, and that, in view of its scale and consequences, the violence which occurred during those events had constituted use of the force and violence required to establish the material element of the offence, the facts also revealing the mental element. It held that the impugned acts had reached the execution phase, given that they presented a tangible and serious danger for the constitutional order and the exercise of governmental functions, even

if the government had not in fact been overthrown or there had been no formal use of force, as the mere objective ability to achieve the aim in question was deemed sufficient. It added that, in the context of collective action, criminal liability could extend beyond the actual perpetrators of the violence to those persons who played a strategic role in leading the events (see paragraph 48 above), or had made an essential contribution to them. Lastly, it held that the breaches of public order, the material damage and the loss of life which had occurred during the Gezi Park events established the existence of the use of force and violence directed against State authority, falling within the scope of Article 312 of the Criminal Code.

55. Secondly, the Assize Court assessed, as a whole, the violence that had taken place during the Gezi Park events. It noted that 746 gatherings had been held in 78 provinces, during which considerable material damage had been caused to public and private property. It noted, in particular, that 280 workplaces and 259 vehicles, including 103 police vehicles, had been damaged, as had several political and institutional buildings, including a police station, five public buildings – including the headquarters of an opposition party – and twelve buildings belonging to local branches of the ruling party. It further noted that many elements of urban infrastructure, such as video-surveillance systems, road signs, street furniture, landscaping displays and police stations, had been destroyed or seriously damaged. Those events had resulted in the death of one law-enforcement officer and five civilians, and hundreds of people had been injured.

56. The Assize Court found that, having regard to the scale of those events and their human and material consequences, the judicial authorities could legitimately consider that the events in question had involved an element of force and violence within the meaning of Article 312 of the Criminal Code. In support of that classification, it referred to the Court of Cassation's case-law on the miliary memorandum of 28 February 1997 – that is, a process of pressure exerted by the army on the government of the day in the name of protecting secularism, described as a "post-modern *coup d'état*" –, in which it had been held that acts forming part of a continuous process of institutional pressure, based on physical and psychological force, could constitute an attempt to overthrow the government, even in the absence of force exerted directly and exclusively against its members. It held that, under that approach, the absence of force at certain stages did not preclude criminal classification if the acts formed an interdependent whole, unified by a common intention and objectively capable of producing the desired result. It further noted that acts of force capable of prompting the government's resignation could be unsuccessful, without this precluding the application of Article 312 of the Criminal Code. It explained that a distinction had to be made based on the degree of danger created and the defendants' actual contribution. Applying those principles, it held that the deployment of tanks, taken alone in the above-mentioned case, had been sufficient to establish intent and force, and

that, a *fortiori*, the violence committed during the Gezi Park events, particularly in the area around the Prime Minister's Office in Beşiktaş (see paragraphs 20 above and 75 below) and directed against the security forces, clearly revealed the existence of force and violence directed against the government.

57. In consequence, the Assize Court concluded that the offences with which the applicant had been charged did not constitute a separate offence aimed at abolishing the constitutional order within the meaning of Article 309 of the Criminal Code, but amounted to an attempt to hinder the exercise of governmental functions by force and violence, within the meaning of Article 312 of the same Code. With regard to the separate charges of a political or military nature, it noted that, although criminal charges had been instituted for espionage, the evidence in the case file had not been sufficient to identify with certainty information that was covered by State secrecy or to establish that the applicant had transmitted or obtained such information for the purposes of espionage, and it accordingly acquitted him on that charge. It noted, however, that prosecutions had been brought in respect of multiple ordinary-law offences in the context of the Gezi Park events, including damage to public and private property, attacks against the police and violations of the legislation on assemblies and demonstrations, and that those acts had been attributed to the participants. Lastly, in view of the applicant's conduct during the proceedings and the nature of the offences found, the Assize Court held that there were no grounds for applying mitigating circumstances or reductions of sentence.

2. *The appeal lodged by the applicant*

58. On 20 June 2022 the applicant appealed against the judgment of 4 March 2022. He began by challenging the Assize Court's decision not to allow his application for the judicial bench and Judge M.B to withdraw, arguing that the latter's links to the ruling party had been discovered only at the final hearing. He then submitted, as a preliminary point, that he was an environmental activist and that he had acted exclusively to promote the rule of law and environmental protection, without ever resorting to violence or encouraging such conduct. Procedurally, the applicant challenged the lawfulness of the use of telephone tapping, arguing that it had been authorised and implemented in the context of a separate investigation, unrelated to the charges against him in the proceedings in question. He also criticised the preparatory acts that had led to his conviction, arguing that they had been conducted in breach of the applicable legal provisions, thus undermining the overall fairness of the proceedings. The applicant further argued that several of his requests to adduce evidence had been refused without sufficient reasons being given. He noted, in particular, that his request to have evidence taken from two ministers who had been in office at the material time, namely the Minister of Justice and another minister, had been rejected without

justification. He also pointed out that on 17 January 2022 the Assize Court had set aside its earlier decision to hear a witness, S.T., who had been scheduled to be heard on 8 October 2021, without providing any valid reason for that change.

59. With regard to the constituent elements of the offence, the applicant submitted that the conditions for the application of Article 312 of the Criminal Code had not been met, since there was no evidence that he had planned, organised or carried out any action aimed at overthrowing the government. He noted that the vast majority of the demonstrations had been peaceful and that acts of violence had been observed in only a small minority of them. In addition, he denied having organised or financed the Gezi Park events. He argued that the MASAK report did not disclose any suspicious financial transfers. He stated that the public limited company Anadolu Kültür was a legally incorporated company that was regularly audited by the competent authorities, and that no illegal activity had ever been found. He added that a request for the company's dissolution had been dismissed by a judgment of the Istanbul Commercial Court of 23 December 2021, which had noted the absence of unlawful financial transactions and held that the donations received had been used exclusively for cultural and educational purposes. As to the material assistance allegedly provided to the demonstrators, the applicant stated that it had been limited to low-cost items of a humanitarian nature, such as some sandwiches, cloth masks purchased from pharmacies, pastries, a folding table and a loudspeaker, and that no financial transfers had been made. He also argued that much of the evidence taken into consideration by the domestic courts did not relate to the period of the Gezi Park events. In his view, allegations concerning the organising, funding or coordination of the demonstrations had been made without any factual basis and in the absence of evidence.

60. As to his contacts with foreigners, the applicant explained that these involved, in particular, exchanges with diplomats, representatives of international human-rights organisations, officials of the European Commission and the Council of Europe, and members of the European Parliament. He added that he had also met, on several occasions, the President of the Republic of Türkiye and the Ministers of Justice and of Foreign Affairs, which, in his view, demonstrated the transparent and legitimate nature of those contacts. With regard to the charges concerning the media, the applicant denied having financed a documentary entitled Video Occupy, claiming that no such documentary had been made. He also denied any involvement with Serbian activists or their organisations, arguing that there was no evidence to substantiate those allegations.

61. Lastly, the applicant rejected the argument that the Gezi Park events had been planned in advance, asserting that this was based on speculation rather than on specific evidence. He argued that the charges against him were consistent with an approach that could be described as the "criminal law of

the enemy" (*düşman ceza hukuku*). He submitted that there was no material, factual or intentional link between the 746 events recorded [across the country], that he had not taken part in any acts of violence and that he had not left Istanbul during the entire period in question, although he had been held liable for all of the events and for the isolated acts of violence which had occurred during some of the demonstrations.

62. Lastly, the applicant disputed the finding regarding the violence in Beşiktaş, in front of the Prime Minister's office, which had been attributed to the *Çarşı* group (see paragraphs 20, 39 and 42 above and 75 below). He noted that the proceedings against him had been first joined and then severed from the proceedings in relation to that group, although there was no evidence showing a link between him and the events in question. He submitted that the use of those events as the basis for his conviction, by analogy with the deployment of tanks at Sincan (in the context of the "miliary memorandum of 28 February 1997", see paragraph 56 above), was not only illogical but also incompatible with the principle of criminal legality and the prohibition of analogy in criminal law.

3. *Confirmation of the applicant's conviction on appeal*

63. In a summary judgment of 28 December 2022, the Istanbul 3rd Regional Court dismissed the applicant's appeal.

4. *Appeal on points of law*

64. On 16 January 2023 the applicant appealed on points of law against the judgment of 28 December 2022. He repeated in substance the same arguments as those submitted to the 13th Assize Court (see paragraphs 44-45) and the 3rd Istanbul Regional Court (see paragraphs 58-62 above).

65. In a judgment of 28 September 2023 the Court of Cassation upheld with final effect the applicant's conviction for attempting to overthrow the government. It referred to all the accusations against him, the acts with which he was charged, the violence that had occurred during the Gezi Park events and his numerous contacts with the other co-accused and with various well-known figures from, among other bodies, the institutions of the European Union, the Council of Europe, non-governmental organisations and foreign diplomatic missions. Assessing these factors as a whole, the Court of Cassation found that they established the applicant's participation in the organising, planning and leadership of the Gezi Park events, as well as his role in directing and financing the actions that had been taken in that context. It held that, having regard to the chronology of the events and their consequences, there was no doubt that the elements of force and violence constituting the offence under Article 312 § 1 of the Criminal Code had been made out.

66. With regard to the legal classification of the facts, the Court of Cassation pointed out that the offence provided for in Article 312 of the Criminal Code did not concern solely the actual overthrow of the government, but also any attempt to prevent it from exercising its functions. It emphasised that the offence was one of attempted and actual threat, and that it was not necessary for the ultimate aim to have actually been achieved, since coercive acts had been taken in order to execute it, and those had been objectively capable of bringing about the desired outcome. It clarified that force and violence, understood as physical or psychological pressure on individuals or institutions, were essential elements of the offence and criminal liability could extend to any person who had participated in the planning, organising or leadership of the events, or had made an essential contribution to them. Applying those principles, it considered that the Gezi Park events amounted to an attempt to hinder the exercise of governmental functions by force and violence, characterised in particular by coordination of the activities, the scale of the disturbances and the creation of a climate of chaos.

67. With regard to the lawfulness of the evidence, the Court of Cassation found that the telephone tapping records used in the proceedings had been obtained in accordance with domestic law, on the basis of judicial decisions delivered pursuant to Article 135 of the Code of Criminal Procedure and in the context of an initial investigation into a so-called "catalogue" offence, for which there existed a statutory presumption of the existence of grounds for detention. It noted that the subsequent reclassification of the facts as an attempt to overthrow the Government did not affect the validity of the interceptions that had already been authorised. On the basis of settled case-law, it held that evidence lawfully obtained in respect of one offence could be used in respect of a reclassified or related offence, provided that it remained relevant and related to the same facts. It concluded that the interceptions of communications, which pursued legitimate national security and public-order objectives, were lawful and could validly be used as a basis for the conviction.

68. Lastly, with regard to the acts attributed personally to the applicant, the Court of Cassation accepted the prosecution's analysis that he had organised and coordinated the Gezi Park demonstrations, in cooperation with civil-society structures and national and international networks, while acting indirectly in order to avoid public exposure. The applicant was accused of having exerted a decisive influence on the main entities involved in the movement, providing logistical and financial support to the protesters, making premises available, facilitating financial flows and contributing to structuring the movement. The indictment also emphasised his attempts to internationalise the events and increase pressure on Türkiye through diplomatic, media and institutional contacts, and through communication and media-production activities. The applicant was also accused of having organised forums, training courses and networks, with a view to maintaining

and expanding the movement, although the demonstrations had ebbed. On the basis of all those factors, the Court of Cassation concluded that the element of force and violence within the meaning of Article 312 § 1 of the Criminal Code had been established and that the applicant should be held liable for an attempt to overthrow the government by force and violence.

F. Judgment of the European Court of Human Rights of 11 July 2022, in the context of infringement proceedings

69. As already indicated (see paragraph 15 above), the Court's *Kavala* judgment of 10 December 2019, which became final on 11 May 2020, was transmitted to the Committee of Ministers for the purpose of supervision of its execution, in accordance with Article 46 § 2 of the Convention. Noting that the judgment had not been executed, on 2 February 2022 the Committee of Ministers decided, by an interim resolution under Article 46 § 4, to refer the matter to the Court, which delivered the above-cited *Kavala (infringement proceedings)* judgment on 11 July 2022. In that judgment, the Court held that the applicant had been deprived of his liberty continuously since 18 October 2017, reiterated the obligation to release him immediately, and noted that the new charges against him had not been based on any substantially new fact, but resulted from a reclassification of evidence that had already been examined and found to be insufficient. It noted, in particular, that the information subsequently added to the case file did not disclose any new evidence capable of establishing the constituent elements of the alleged offences and merely reclassified previously analysed facts. Emphasising that such a reclassification could not call into question the conclusions in its initial judgment without rendering meaningless the obligation to execute that judgment, it concluded that the applicant's continued detention, based on ordinary and lawful activities connected with the exercise of Convention rights and followed by a conviction vitiated by a violation of Article 18, did not enable it to find that its judgment, which had become final, had been executed in good faith, and that Türkiye had therefore failed to comply with that judgment, as it was required to do under Article 46 § 1 of the Convention (ibid., §§ 157-74).

G. The applicant's individual applications to the Constitutional Court

1. *Individual application of 9 June 2022*

70. On 9 June 2022 the applicant lodged an individual application with the Constitutional Court, complaining about his pre-trial detention in the period prior to his conviction on 25 April 2022. He alleged a violation of Article 5 § 1 of the Convention on account of the lack of reasonable suspicion justifying his placement in detention, as well as a violation of Article 5 § 3 on account, first, of the lack of relevant and sufficient grounds for his

continued pre-trial detention and, secondly, of the excessive length of that detention. He also relied on Article 5 § 4, complaining of a lack of promptness in the proceedings before the Constitutional Court, and on Article 6 § 1, concerning the fairness of the proceedings against him. He also requested that his application be granted priority.

71. This application was first assigned to the relevant section on 15 June 2022. On 22 June 2022 the Second Section of the Constitutional Court notified the Ministry of Justice of the application so that it could submit written observations. On 24 August 2022 the Ministry of Justice submitted its observations. On 12 July 2023 the Second Section decided to refer the case to the plenary assembly of the Constitutional Court. On 25 July 2023 the plenary assembly placed the case on its agenda, but decided to adjourn its examination. The case remains pending before the Constitutional Court.

2. Individual application of 24 October 2023

72. On 24 October 2023 the applicant lodged a second individual application with the Constitutional Court, complaining, among other points, about his conviction. Relying on Article 5 of the Convention, taken in conjunction with Article 18, and referring in particular to the Court's judgment of 11 July 2022, he alleged that his detention was arbitrary. He also relied on Article 6 § 1 (fairness of the proceedings, lack of reasoning in the decisions, violation of the principles of equality of arms and adversarial proceedings, lack of independence of the court and excessive length of the proceedings), Article 6 § 2 (presumption of innocence) and Article 6 § 3 (restrictions on the rights of the defence) of the Convention, and on Article 7. He further submitted that lawful activities – such as the preparation of videos, documentaries and exhibitions, meetings with the Commissioner for Human Rights about a ban on the use of tear gas, meetings with diplomatic missions and political figures, as well as his activities as a human-rights defender and his democratic commitments to strengthen civil society in the context of the Anadolu Kültür limited company – had been unjustly classified as criminal acts, in breach of Articles 10 and 11 of the Convention, taken alone and in conjunction with Article 18. He also complained about his conditions of solitary confinement. He further alleged a violation of Article 3 of the Convention, arguing that the excessive length of his detention, assessed in the light of the particular circumstances of his case, had attained the threshold of severity prohibited by that provision.

73. This individual application was initially assigned to the relevant section on 18 January 2024. On 1 February 2024 the First Section of the Constitutional Court notified the individual application to the Ministry of Justice so that it could submit written observations. On 3 April 2024 the Ministry of Justice submitted its observations to the Constitutional Court. This application is also still pending.

3. Decision of the Committee of Ministers

74. At its 1563rd meeting (9–11 June 2026), the Committee of Ministers reiterated its serious concern about the applicant's continued detention and called on the Turkish authorities, including the judiciary, to take all necessary measures without delay in order to secure his immediate release. It underlined, in particular, the imperative need for the Constitutional Court to deliver, before 31 August 2026, an urgent and Convention-compliant decision, so that the case could be resolved swiftly and effectively within the domestic legal system (CM/Del/Dec(2026)1563/H46-40).

H. Other material submitted by the applicant

75. The applicant submitted to the Court the judgment of 23 December 2024, in which the Istanbul 13th Assize Court acquitted, for lack of evidence, the thirty-five defendants in the so-called "Çarşı" proceedings, which had been joined to those of the applicant on 2 August 2021 (see paragraph 39 above) and subsequently severed from them (see paragraph 42 above). The defendants in question had been charged in relation to events which had taken place in Beşiktaş (see paragraphs 20 and 39 above). They were accused, in the context of the Gezi Park events, of having attempted to overthrow the government and having attacked, using stones and Molotov cocktails, the Prime Minister's office and the premises of the Justice and Development Party, located in the Beşiktaş district. In reaching its verdict, the Assize Court considered that although the defendants had been prosecuted both for a violation of the Meetings and Demonstrations Act (Law no. 2911) and for attempting to overthrow the government within the meaning of Article 312 § 1 of the Criminal Code, the constituent elements of those offences had not been made out in a sufficiently precise and concrete manner. It noted that, while it had been established that the defendants had participated, individually or collectively, in the demonstrations against the Gezi Park project in Taksim – an activity covered by the exercise of constitutional rights and freedom of democratic expression – there was no evidence enabling it to be established, in respect of any of them, that they had taken part in acts of violence or crime, or that they had acted within the framework of a concerted, structured and hierarchical plan aimed at overthrowing the government. Noting that the evidence relied on, including the telephone-tapping records and location data, had not been considered admissible, that no report had been drawn up immediately after the alleged events and that the defendants had not admitted to any of the charges against them, it concluded that, in the absence of evidence establishing the material and mental elements of the alleged offences and in accordance with the principle that the doubt must benefit the accused, it was necessary to acquit each of the defendants.

76. The applicant submitted that on 7 May 2023 the digital platform *Tabii* had begun broadcasting the series *Metamorfoz* (Metamorphosis), which was funded by TRT (a public channel). This series features a character who is portrayed as an antagonist, a "bad capitalist", a spy and a criminal, and has a clear physical and biographical resemblance to the applicant. Complaints were lodged on his behalf with the Ankara public prosecutor, the Istanbul Magistrate's Court and the Turkish Broadcasting Authority, all of which were rejected by those bodies on various dates.

77. The applicant also submitted that, following the award of the Václav Havel Prize to him by the Parliamentary Assembly of the Council of Europe on 9 October 2023, senior Turkish State officials publicly made stigmatising remarks about him. He submitted to the Court numerous statements, similar to those brought to the Court's attention in the context of its initial judgment (see *Kavala*, cited above, § 61), made by senior national officials in respect of the criminal proceedings against him and the procedure before the Committee of Ministers.

78. The applicant further submitted that the public limited company Anadolu Kültür, a non-profit cultural organisation founded in 2002 and chaired by him until his arrest in 2017, had been engaged in cultural dialogue and the promotion of cultural rights for more than eighteen years in a fully legal framework; the company's accounts and activities had been regularly audited, and no financial irregularities had been found. He explained that the dissolution proceedings initiated by the Ministry of Trade in 2020, based in his view on a restrictive interpretation of company law concerning non-commercial activities, had been successful only after a change in the Court of Cassation's case-law in September 2024, contradicting previous decisions by the commercial courts and in breach of an official report of 4 August 2020, which had confirmed the transparency and legality of all of the company's funding, including that received from the Open Society Foundation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

79. Article 2 of the Constitution reads as follows:

> "The Republic of Türkiye is a democratic, secular and social State based on the rule of law, respectful of human rights in a spirit of social peace, national solidarity and justice, adhering to the nationalism of Atatürk and resting on the fundamental principles set out in the Preamble."

80. In so far as relevant to the present case, Article 90 § 5 of the Constitution reads:

> "International agreements duly put into effect have the force of law. Their constitutionality cannot be challenged in the Constitutional Court. In the event of a

conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

81. In so far as relevant to the present case, Article 148 § 3 of the Constitution reads:

"3. Anyone who considers that a public authority has violated one of his or her fundamental rights and freedoms as protected by the Constitution and secured under the European Convention on Human Rights may apply to the Constitutional Court. Such an application may only be made after all ordinary legal remedies have been exhausted."

82. Article 153 § 6 of the Constitution reads as follows:

"Decisions of the Constitutional Court shall be published immediately in the Official Gazette, and shall be binding on the legislative, executive and judicial organs, the administrative authorities and natural and legal persons."

B. The Criminal Code

83. The relevant provisions of the Criminal Code read as follows:

Article 309 § 1

"Anyone who attempts to overthrow by force and violence the constitutional order provided for by the Constitution of the Republic of Türkiye or to establish a different order in its place, or *de facto* to prevent its implementation, whether fully or in part, shall be sentenced to aggravated life imprisonment."

Article 312 § 1

"Anyone who attempts to overthrow the Government of the Republic of Türkiye by force and violence (*cebir ve şiddet*) or to prevent it, whether fully or in part, from discharging its duties shall be sentenced to life imprisonment."

Article 314

"1. Anyone who forms or leads an armed organisation with the purpose of committing the offences listed in the fourth and fifth parts of this chapter shall be sentenced to a term of imprisonment of ten to fifteen years.

2. Anyone who joins an organisation referred to in the first paragraph of this Article shall be sentenced to a term of imprisonment of five to ten years.

..."

Article 328 § 1

"Anyone who obtains, for the purposes of political or military espionage, information which, by its nature, must remain confidential for reasons linked to State security or to the State's domestic or foreign policy interests, shall be liable to a sentence of fifteen to twenty years' imprisonment."

C. The Code of Criminal Procedure

84. Article 100 § 1 of the Code of Criminal Procedure reads as follows:

> “1. If there are facts giving rise to a strong suspicion that the [alleged] offence has been committed and to a ground for pre-trial detention, a detention order may be made in respect of a suspect or an accused. Pre-trial detention may only be ordered in proportion to the sentence or preventive measure that could potentially be imposed, bearing in mind the significance of the case...”

D. The irreducible nature of the sentence of life imprisonment

85. Section 107 of the Execution of Sentences and Security Measures Act (Law no. 5275) provides, in principle, for the possibility of obtaining conditional release after thirty years’ imprisonment for persons who have been sentenced to aggravated life imprisonment, after twenty-four years for persons sentenced to life imprisonment under the ordinary regime, and after serving two-thirds of the sentence for persons sentenced to other prison terms. However, this possibility does not exist in respect of certain serious offences, including offences against the State or the constitutional order. With regard to time limitations on the enforcement of sentence, although the periods in question are, in principle, determined in accordance with the severity of the sentence, they do not apply either to (aggravated or ordinary) life sentences, or to certain serious offences against the State. In this regard, given that Article 312 of the Criminal Code punishes offences against the constitutional order, the mechanisms for conditional release and time limitations on the enforcement of sentence are not applicable to persons convicted and sentenced under that provision. Release may also be granted on an exceptional basis by the President of the Republic in the event of serious illness or old age. Lastly, general or partial amnesty laws may be adopted from time to time in response to societal considerations (for further details, see *Öcalan v. Turkey (no. 2),* nos. 24069/03 and 3 others, §§ 62-71, 18 March 2014).

E. Case-law of the Constitutional Court

1. The Şerafettin Can Atalay case

86. Mr Şerafettin Can Atalay, a lawyer and human-rights defender, was tried in the same criminal proceedings concerning the Gezi Park events as the applicant and sentenced by the Istanbul 13th Assize Court to eighteen years’ imprisonment for aiding and abetting the attempt to overthrow the government by force and violence, in application of Article 312 of the Criminal Code. An appeal, accompanied by an application for release, was dismissed. While his appeal on points of law was pending before the Court of Cassation, he was elected as a member of parliament on the list of the

Turkish Workers' Party (TİP). He requested a suspension of the proceedings, and his release, on the grounds of parliamentary immunity; those requests were rejected and his conviction was upheld.

87. Ruling on an individual application, the Constitutional Court, in a judgment of 25 October 2023 (*Şerafettin Can Atalay no. 2*, B. No: 2023/53898), held that Mr Atalay's continued detention in spite of parliamentary immunity was contrary to Articles 19 and 67 of the Constitution. It found a violation of his right to be elected and to engage in political activities, and of his right to liberty and security. Despite that judgment, the Istanbul 13th Assize Court ordered Mr Atalay's continued detention and sent the case file to the Court of Cassation. In a decision of 8 November 2023, the Third Criminal Division of that court refused to comply with the Constitutional Court's judgment, confirmed the final nature of the conviction, asked that its decision be transmitted to the National Assembly and ordered that a criminal complaint be lodged against the Constitutional Court judges concerned.

88. In a second judgment of 21 December 2023 (*Şerafettin Can Atalay no. 3*, B. No: 2023/99744), the Constitutional Court found that its previous judgment had not been executed and held that this represented a serious violation of the constitutional order. It noted that the dispute was no longer limited to the applicant's individual situation, but raised a fundamental question concerning compliance with its own judgments. It concluded that Mr Atalay's continued imprisonment in spite of a decision ordering his release amounted to a breach of his right of individual application, and, in consequence, of the right to be elected, the right to engage in political activity, and the right to liberty and security.

The Constitutional Court noted, in particular, that the domestic courts' refusal to execute its judgment amounted to a separate violation, affecting the effectiveness of an individual application to it. It reiterated that "the effective execution of the Constitutional Court's decisions [is] an indivisible component of the right of individual application" (§ 56) and that failure to comply with those decisions "amount[ed] to a manifest and serious violation" of that right (§ 56). It also noted that the lower courts had refrained from executing the judgment finding a violation and had taken an approach that had no legal basis, going so far as to refuse expressly to comply with it (§ 50). Lastly, it drew attention to the consequences of this situation for the rule of law. It emphasised that "the non-execution or delayed execution of decisions ... [had] profound consequences ... both for individuals' lives and for the functioning of the State" (§ 58) and that "in a State governed by the rule of law, it [was] unacceptable that judicial decisions ... [be] deprived of their effect" (§ 58). It added that non-compliance with its judgments "undermin[ed] individual and societal confidence in the rule of law" (§ 59) and compromised the constitutional order by depriving persons who came before the courts of the effective application of recognised rights. It concluded that “[the] Constitutional Court’s examination of an individual application provides individuals with the highest level of protection in terms of securing and developing their fundamental rights and freedoms ...” and that “[the] refusal to execute the Constitutional Court’s decision has, in respect of the applicant (*başvurucu*), rendered meaningless all of the guarantees entailed by the right of individual petition as provided for in Article 148 § 3 of the Constitution” (§ 71).

89. In spite of these findings, the criminal courts did not comply with the Constitutional Court’s judgments. Mr Atalay, who forfeited his status as a member of parliament, remains in detention and the Court has no information as to the possible institution of criminal proceedings against the Constitutional Court judges in question. On 16 April 2024 Mr Atalay lodged an application with the Court; notice of the application was given to the Turkish Government on 27 August 2024, and it remains pending.

2. The Tayfun Kahraman case

90. Mr Tayfun Kahraman, a town planner and academic, was one of the eight defendants prosecuted in the criminal proceedings brought against the applicant in relation to the Gezi Park events. He was sentenced to eighteen years’ imprisonment for aiding and abetting the attempt to overthrow the government by force and violence, in application of Article 312 of the Criminal Code. He was one of the leaders and spokespersons of Taksim Solidarity (see paragraphs 18 and 20 above).

91. In a judgment of 31 July 2025 (application no. 2023/98215), published in the Official Gazette on 17 October 2025, the Constitutional Court, sitting as a full court, ruled on Tayfun Kahraman’s individual application. It held, by nine votes to five, that there had been a violation of the right to a fair trial.

92. In its judgment, the Constitutional Court began by setting out the factual background to the case. The co-defendant was among eight defendants prosecuted following the demonstrations held between 28 May and 30 August 2013 to protest against the Taksim Square pedestrianisation project. The protests had spread throughout the country and, in part, had descended into violence. At the relevant time, he held positions of responsibility within the Union of Turkish Chambers of Engineers and Architects and was an expert with a body under the authority of the Ministry of Culture and Tourism; since 2014 he had been a university teacher. On the basis of official data and a report by the Human Rights Institution of Turkey published in October 2014, the Constitutional Court also had regard to the nationwide dimension of the Gezi Park events, which had been marked by several thousand protests, millions of participants, deaths, numerous casualties, detentions and investigations in respect of both demonstrators and law-enforcement officers.

93. On the merits, the Constitutional Court noted that the domestic courts had attributed to the co-defendant an active role in initiating, coordinating

and disseminating the events, relying mainly on social media posts, public statements and his participation in structures such as Taksim Solidarity. It held:

> "49. However, the courts confined themselves to citing ... the social media posts and press releases used as a basis for the penalty, and merely stated that the remarks contained in those posts were generally provocative in tone. Thus, they did not provide any grounds making it possible to identify, among the numerous messages used to substantiate the conviction, any that might have contained direct calls for violence, incitement to violence or expressions seeking to encourage an attempt to overthrow the government by the use of force or violence. Furthermore, they had not examined the existence of a causal link between the publications and statements in question and the violent events. It is therefore not clear from the courts' assessments which specific remarks were allegedly inciting in nature, nor which specific acts of violence, possibly linked to those remarks, had resulted from them, or even which specific violent events those publications had given rise to. In addition, the first-instance court stated that the [co-defendant] had coordinated the shooting of films, documentaries and videos with a view to shaping societal and international perception of the Gezi Park events, without however specifying the film in question, which remarks were used to create such a perception, and in what way. In the light of these findings, the [first-instance] judgment does not establish the active role attributed to the applicant in those acts of violence."

94. The Constitutional Court also noted that the Court of Cassation had upheld the conviction on the basis of recordings of wire-tapped communications that were relied on for the first time at the appeal stage, without affording the applicant the opportunity to challenge their relevance, in breach of the principles of equality of arms and adversarial proceedings. It further observed that the courts had not convincingly established the existence of any prior plan or organisation, referring only to limited and insufficiently detailed contacts with other defendants; nor had they explained the link between the alleged participation in the forums and the acts of violence. Lastly, as regards the classification of the Gezi Park events, it held as follows:

> "56. Finally, ... in another set of proceedings concerning the Gezi Park events, in the course of which other defendants were tried by a criminal court of first instance, the Gezi demonstrations were considered to relate to the [exercise of] rights guaranteed by the Constitution, and it was noted that there was no evidence to establish that Taksim Solidarity was a criminal organisation; that decision issued by that court has become final. In the present case, however, the domestic courts have not provided sufficient reasoning to explain why the same legal issue has been interpreted differently in [Mr Kahraman's] case."

95. The Constitutional Court concluded that these shortcomings in the reasoning, combined with the breaches of procedural safeguards, had infringed the right to a fair trial as a whole.

96. Following the Constitutional Court's judgment in *Tayfun Kahraman*, the situation developed in a similar way to that in *Şerafettin Can Atalay* (see paragraphs 86-89 above). In line with Article 153 of the Constitution, the case file was sent to the competent 13th Assize Court so that it would take the

necessary measures to remedy the violations found. In its decision of 6 November 2025, however, the 13th Assize Court dismissed the request for reopening of the proceedings and for release pending trial. It held, in substance, that it was not necessary to give effect to the Constitutional Court's judgment, as it did not necessitate the reopening of the proceedings or a stay of execution of the sentence. An appeal against that decision was dismissed by the Istanbul 14th Assize Court on 13 November 2025.

97. On 27 November 2025 Mr Kahraman lodged a second individual application with the Constitutional Court, requesting an interim measure for his release on account of the continued deterioration in his health. In a provisional decision of 3 December 2025, the Constitutional Court rejected the request for release on health grounds, while ordering that his health be monitored and allowing for the possibility of hospitalisation if necessary.

III. INTERNATIONAL LAW AND PRACTICE

A. International texts on the protection and role of human-rights defenders and non-governmental organisations

98. The relevant Council of Europe and international texts on the protection and role of human-rights defenders and non-governmental organisations are set out in the *Aliyev v. Azerbaijan* judgment (nos. 68762/14 and 71200/14, §§ 88-92, 20 September 2018) and in *Kavala*, cited above, §§ 74-76. Taken as a whole, those instruments confirm that the peaceful activities of lobbying, fact-finding, awareness-raising, cooperation with international mechanisms and participation in public debate lie at the very heart of the task of human-rights defenders and necessitate increased protection on the States' part, in accordance with the requirements of the Convention, rather than repression through the criminal law.

B. Venice Commission opinion on the judiciary in Türkiye

99. At its 110th plenary session on 10 and 11 March 2017 the Venice Commission adopted a critical opinion on the draft legislation amending the Turkish Constitution and introducing a presidential system (for the relevant parts of this text, see *Selahattin Demirtaş v. Türkiye (no. 4)*, no. 13609/20, § 115, 8 July 2025). It considered that the proposed reform would seriously undermine the independence of the judiciary, particularly by changing the composition of the Council of Judges and Prosecutors so as to place it under the direct or indirect control of the President of the Republic, contrary to international standards. In view of this Council's central role in the career and disciplining of judges and public prosecutors, the Venice Commission concluded that the reform would excessively strengthen the executive, weaken judicial oversight and introduce a presidential regime lacking in

sufficient checks and balances, thus posing a serious risk of a drift towards authoritarian rule.

C. Council of Europe Commissioner for Human Rights

100. Following her visit to Türkiye from 1 to 5 July 2019, the Council of Europe Commissioner for Human Rights, Ms Dunja Mijatović, issued a troubling assessment regarding the functioning of the criminal-justice system. In her report of 19 February 2020, she noted that, in the Kavala case, as in other similar files, the judicial authorities tended to presume a criminal intention from the outset, even before collecting and examining the evidence, thus reversing the evidentiary logic at all stages of the proceedings. In her view, this practice contributed to a situation where lawful actions that were protected under the Convention were re-interpreted as circumstantial evidence of serious offences, undermining legal certainty and creating a serious chilling effect on civil society, with a risk of trials based on supposed intentions rather than on material evidence capable of proving guilt.

101. On 5 March 2024 the Council of Europe Commissioner for Human Rights published a "Memorandum on freedom of expression and of the media, human rights defenders and civil society in Türkiye" (CommHR(2024)16). The relevant parts of the memorandum read, *inter alia*, as follows:

> "26. The Commissioner finds it deeply regrettable that the effects of the state of emergency have not been reversed and that they continue to impact in a profoundly negative way the work of human rights defenders and civil society. ... The lack of effective implementation of the judgment of the Court in the case of Osman Kavala against Türkiye, in which the Commissioner has made several interventions, is the clearest illustration of the hostile approach of the Turkish authorities towards human rights defenders and civil society."

102. In the same memorandum, the Commissioner reiterated and elaborated on the findings made in her 2020 report, and her subsequent statements, drawing a particularly alarming picture of the justice system in Türkiye. She emphasised the urgent need to ensure the structural independence of the Council of Judges and Prosecutors (HSK), specifically through a decisive reduction in the executive branch's influence on the career and disciplining of judges, and to address numerous long-standing problems in the criminal justice system, particularly the misuse of pre-trial detention and the lack of respect for basic principles of the rule of law. She also called for a complete overhaul of the Criminal Code and of the anti-terrorist legislation, making full use of the Court's case-law and the recommendations of the Venice Commission.

103. The Commissioner also noted the judiciary's persistent partiality to political interests and a systemic lack of independence, findings that were corroborated by the Council of Europe's Group of States against Corruption

(GRECO) and the Parliamentary Assembly. She was particularly concerned by the ongoing failure to comply with the judgments of the Constitutional Court, exacerbated by public attacks against that court, the refusal to implement certain of its decisions and the lack of action by the Turkish Parliament in response to pilot judgments requiring legislative reforms. According to the Commissioner, this situation represented a serious setback for the rule of law, undermined the effectiveness of the Turkish Constitutional Court as a remedy for human rights violation in Türkiye, and was part of a widespread pattern of misuse of the judicial process to silence human-rights defenders and journalists, posing an existential risk to the rule of law in Türkiye and to the protection of fundamental rights in that State.

104. The Memorandum concludes as follows:

> "58. ... to bring about meaningful change, it is essential for the Turkish authorities to engage constructively with civil society, review and revise restrictive laws, free human rights defenders, journalists, activists and others who are imprisoned for exercising their freedom of expression, respect and implement the judgements of the Constitutional Court and the European Court of Human Rights and ensure impartiality and independence of the judiciary. Strengthening human rights protections, promoting dialogue and inclusivity, and fostering a culture of respect for diverse opinions are crucial steps towards enhancing human rights in Türkiye. It is the Commissioner's sincere hope that the willingness to undertake the process to reverse the currently critical situation will materialise soon."

THE LAW

I. OBJECTION OF NON-EXHAUSTION OF THE INDIVIDUAL APPLICATION BEFORE THE CONSTITUTIONAL COURT

105. The applicant alleged violations of Articles 3, 5, 6, 7, 10, 11 and 18.

106. The Court observes that the Government raised a general objection of non-exhaustion of domestic remedies. They considered that the application was premature, as the applicant's two individual applications to the Constitutional Court were still pending. The first question is whether the applicant was required to await the outcome of those proceedings before applying to the Court; the other objections raised by the Government will be analysed as part of the examination of the complaints under the relevant provisions of the Convention.

A. The parties' submissions

1. The Government

107. The Government raised an objection as to admissibility, on the grounds that there had been a failure to exhaust domestic remedies: in their view, the applicant had applied to the Court prematurely, without waiting for the outcome of two individual applications pending before the Constitutional

Court, lodged on 9 June 2022 and 24 October 2023 respectively, which essentially concerned the same complaints as those submitted to the Court. They also argued that the present application was distinct from those which had given rise to the judgments of 2019 and 2022, in that it was based on new facts and complaints that had not yet been examined by the Constitutional Court. They argued that ever since the decision in *Uzun v. Turkey (dec.)* (no. 10755/13, 30 April 2013) applications lodged with the Court without waiting for the outcome of that remedy had been consistently declared inadmissible, and that the time elapsed since the lodging of the two individual applications to the Constitutional Court was clearly insufficient.

108. The Government also submitted that the Constitutional Court was an effective domestic remedy. In this connection, they claimed that the execution rate for its judgments was 99.84%, with almost all violation judgments having been enforced between 2022 and 2025. They argued that the rare instances of non-execution had subsequently been corrected and that the existence of a systemic lack of effectiveness could not be deduced from isolated cases. In their view, mere abstract doubts were insufficient under the Court's case-law to absolve the applicant from the obligation to exhaust the domestic remedies.

109. In reply to a question posed at the hearing, the Government stated that, since the Constitutional Court's decision of 31 July 2025, individual applications were divided into seven categories, with "urgent" cases being examined as a matter of priority. They submitted that this category included serious situations affecting an individual's life or health, a personal or family situation and the best interests of a child, and also requests for interim measures, cases of detention exceeding the lawful duration, non-compliance with a Constitutional Court judgment finding a violation, serious breaches of the right to a fair trial and, more generally, situations where delay would result in loss of the legal interest of the application. Moreover, the Constitutional Court applied a specific prioritisation policy, particularly in respect of applications concerning ongoing violations, deportation proceedings and cases of non-execution of its own rulings.

110. The Government considered that the applicant's situation did not correspond to any of those scenarios. They alleged that, following his conviction in 2022 for an offence against the government, the applicant's detention came under Article 5 § 1 (a) of the Convention and was therefore not urgent. They submitted that the absence of a decision at this stage ought not to be interpreted as evidence that this remedy before the Constitutional Court was ineffective, but rather as the consequence of a heavy workload, given that the Constitutional Court was faced with a large number of similar applications, some of which preceded that of the applicant and were still pending. In that connection, they referred to statistical data which, in their view, indicated that the majority of cases raising complaints in respect of individual freedom were processed, on average, in about a year and a half, and those concerning other rights took longer. Lastly, they emphasised that

the applicant's situation was being examined within the ordinary procedure, that he had lodged a second, partially overlapping, individual application and that the complexity of the case – especially with regard to the Gezi Park events – justified an in-depth examination. In consequence, they considered that the time elapsed in his case remained reasonable and did not call into question the effectiveness of the remedy, which was, in their view, compatible with the principle of subsidiarity.

2. *The applicant*

111. The applicant submitted that he had exhausted all available and effective domestic remedies within the meaning of Article 35 § 1 of the Convention. He pointed out that the exhaustion requirement concerned only remedies offering reasonable prospects of success, capable of correcting the alleged violations and sufficiently certain in law and in practice, with the burden of proving the effectiveness of a remedy falling to the Government. He added that he had made extensive use both of the ordinary and extraordinary remedies, by challenging on multiple occasions his detention and conviction before all the competent courts, including through several individual applications to the Constitutional Court, requests for reopening of his trial and for release, and through appeals in the interests of the law, but that none of those procedures, undertaken over more than seven years, had resulted in his release or in acknowledgment of the alleged violations.

112. He also submitted that the domestic courts, including the Constitutional Court, had ignored or refused to draw practical conclusions from the Court's judgments of 2019 and 2022, particularly with regard to the lack of reasonable suspicion and the obligation to order his immediate release. In his view, this demonstrated the absence of any realistic chance of success at the domestic level. He further considered that the excessive length of the proceedings before the Constitutional Court, the lack of response to his requests for interim measures and the repeated postponements of examination of his applications deprived the constitutional remedy of any effectiveness, particularly with regard to a review of the lawfulness of his deprivation of liberty. Lastly, he concluded from the recent examples in the Constitutional Court's practice in the *Şerafettin Can Atalay* and *Tayfun Kahraman* cases (see paragraphs 86-96 above) that this remedy did not allow for effective processing of complaints under Article 18 or of complaints relating to aggravated life imprisonment, especially in politically sensitive cases. He concluded that, in his particular circumstances, he could not be faulted for having failed to exhaust domestic remedies.

B. The third-party interveners

1. The Commissioner for Human Rights

113. The Commissioner reiterated that the individual application was an essential guarantee for the protection of human rights and a central element in the principle of subsidiarity, implying a thorough examination, especially when individual liberty was at stake. He expressed concerns as to the non-execution by the lower courts of certain of the Constitutional Court's judgments, and the slowness in processing individual applications, in the absence of clear prioritisation criteria that were compatible with the Convention. In his view, this raised doubts as to the national authorities' concern for attaching urgency to examination of cases concerning deprivation of liberty. By way of example, he referred to the above-mentioned *Şerafettin Can Atalay* and *Tayfun Kahraman* cases.

2. The intervening NGOs

114. In their joint observations, the Turkey Human Rights Litigation Support Project (TLSP), the International Commission of Jurists (ICJ) and Human Rights Watch (HRW) submitted that the Turkish Constitutional Court could no longer be considered as an effective remedy in cases concerning the detention and prosecution of dissidents, given that its composition was largely determined by presidential appointments and that its practice was characterised by selectivity, excessive length of proceedings and a restrictive interpretation of its jurisdiction, thus compromising the independence and promptness of its review. They also pointed to departures from this Court's case-law and noted an increasing tendency on the part of the lower courts not to execute the Constitutional Court's decisions. More broadly, they considered that the proceedings brought against the applicant were taking place against a background of structural weakening of judicial independence – illustrated by the reforms affecting the Council of Judges and Prosecutors and the prosecution and dismissal of judges – and of systemic failure to execute the judgments of this Court and of the Constitutional Court in politically sensitive cases.

C. The Court's assessment

115. According to the Court's settled case-law, the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants to have had recourse to those remedies that are available, adequate and effective before applying to the Court, it being for the Government to show their effectiveness and accessibility, then for the applicant, as appropriate, to demonstrate that they are inadequate or that there exist specific circumstances exempting him or her from this requirement. The purpose of

this rule is to enable the States to prevent or put right the alleged violations at the domestic level, and it reflects the subsidiary nature of the Convention mechanism, closely linked to the right to an effective remedy (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 205, 22 December 2020, with further references; *Sejdovic v. Italy* [GC], no. 56581/00, § 43, ECHR 2006-II; and *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). Its application must be assessed realistically, taking into account not only the remedies that are available in theory but also the general legal and political context in which they operate, as well as the personal circumstances of the applicant (see *Selmouni v. France* [GC], no. 25803/94, § 77, ECHR 1999-V, with further references).

116. The principle of subsidiarity imposes a shared responsibility between the States Parties and the Court (see *Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022). It presupposes that the domestic courts ensure rapid, adequate and effective protection of the rights guaranteed by the Convention. The credibility of the remedies available thus depends not only on the legal context, but also on the tangible implementation of the decisions issued at the national level (see, *mutatis mutandis*, *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 299-303, ECHR 2012 (extracts)).

117. The Court reiterates that, according to its consistent case-law, applicants in cases against Türkiye are in principle required, for the purpose of exhausting domestic remedies, to lodge at final instance an individual application with the Constitutional Court, such applications being, in principle, an effective domestic remedy (see *Uzun* (dec.), cited above, §§ 7-27). It notes that this mechanism, a cornerstone of the national system for protecting fundamental rights, allows persons coming before the courts to rely on the rights guaranteed not only by the Constitution, but also by the Convention, and gives the Constitutional Court the power to find violations, indicate the appropriate reparative measures and, as necessary, to award compensation, thus ensuring at national level the effective implementation of the principle of subsidiarity (ibid., §§ 62-64).

118. In examining whether the domestic remedies have been exhausted in the present case, the Court cannot disregard either the wholly exceptional circumstances of the present case or the applicant's personal situation. It notes in this respect that the applicant has been deprived of his liberty, without interruption, since his arrest on 18 October 2017 – in other words, on the date of its examination of the present case, for more than eight and a half years. It also notes that, throughout this entire period, the applicant has consistently, diligently and unambiguously made use of all the available domestic remedies, and that none of those approaches has led to his release or to adequate acknowledgement of the violations found and appropriate redress. In those conditions, the assessment of the objection alleging a failure to exhaust domestic remedies should not be formalistic: it must be conducted in the light of a concrete assessment of the facts of the case, taking into

consideration both the two previous judgments delivered by the Court in the proceedings concerning the applicant, and the full, sustained and diligent use made by him, over a particularly lengthy period, of the domestic mechanisms for the protection of fundamental rights in order to put forward the complaints that he raises under the Convention.

119. In this connection, the Court notes that it already found, in 2019, a violation of Article 5 § 1 (c) of the Convention on account of the lack of reasonable suspicion that the applicant had committed an offence (see *Kavala v. Turkey*, no. 28749/18, § 159, 10 December 2019), a violation of Article 5 § 4 on account of the failure to rule promptly on his individual appeal (ibid., § 196), and a violation of Article 18 taken in conjunction with Article 5 § 1 on the grounds that the impugned measures pursued an ulterior purpose (ibid., § 232). It also indicated that the Government was to put an end to the applicant's detention and secure his immediate release (ibid., § 240). However, that judgment remains inoperative, in that the applicant's deprivation of liberty has continued, without interruption, since it was delivered.

120. The proceedings brought at domestic level since the judgment of 10 December 2019 have failed to remedy the violations found by the Court. Although the Istanbul 36th Assize Court had acquitted him on 18 February 2020 of the accusations related to the Gezi Park events, the applicant was re-arrested on the same day, on an order from the prosecutor, on suspicion of involvement in the attempted *coup d'état*, then placed in pre-trial detention on the following day; this detention was then extended on the basis of another provision of the Criminal Code (see paragraphs 30-31 above). In its judgment in the context of the infringement proceedings, the Court held that such a succession of measures could not be regarded as compatible with the obligation to execute the judgment in good faith, in that it breached the "conclusions and spirit" of the *Kavala* judgment. It also reiterated that the finding of a violation of Article 18 taken in conjunction with Article 5, set out in that judgment, had the effect of vitiating any measures arising from the accusations in relation to the Gezi Park events and the attempted *coup d'état* (see *Kavala v. Türkiye (infringement proceedings)* [GC], no. 28749/18, § 172, 11 July 2022).

121. It follows that the applicant's case is characterised by a persistent failure to execute the Court's judgments, and by the lack of tangible effect on his situation of an acquittal judgment, in spite of the fact that the applicant has remained deprived of his liberty for a very long period.

122. The Court further notes that on 9 June 2022 the applicant lodged an individual application with the Constitutional Court in order to challenge his pre-trial detention and requesting that his case be granted priority. It notes that although that application is ready for decision and directly concerns the right to individual liberty in the context described above, the Constitutional Court has not to date adopted any decision, leaving the proceedings pending

for more than four years. In this connection, it notes that, having placed the case on its agenda on 25 July 2023, the Constitutional Court, sitting in plenary session, immediately adjourned it, thus extending the proceedings and, by extension, the uncertainty surrounding the applicant's prolonged detention (see paragraph 71 above). It also notes that the second individual application lodged by the applicant on 24 October 2023, this time concerning the deprivation of liberty arising from his final conviction, has also been pending for more than two years and nine months, although the Ministry of Justice filed its observations on 3 April 2024 (see paragraph 73 above).

123. Having regard to the context described above (see paragraphs 118-122) and the nature of the complaints, which are directly linked to the particularly long period during which the applicant has been held in detention, those time periods appear manifestly excessive in the particular circumstances of the case.

124. In the Court's opinion, where the right to individual liberty is at stake or where the proceedings on which the deprivation of liberty was based are flawed by deficiencies of such seriousness that a final judgment of the Court expresses serious doubts as to their fairness – as in the present case – (see *Kavala (infringement proceedings)*, cited above, § 172), a delay in examining an individual application cannot be construed as a mere procedural shortcoming. Such a situation is liable to prolong the violation previously found by the Court in the applicant's case, to exacerbate its immediate – sometimes irreversible – effects and to keep the applicant in a state of legal uncertainty that is incompatible with the rule of law.

125. Furthermore, the average time – about a year and a half – taken to examine cases concerning individual freedom (see paragraph 110 above) would also appear difficult to reconcile with the requirements of Article 5 § 4 of the Convention. In this connection, it should be noted that the Court has already held that a period of one year and sixteen days cannot be considered "speedy" for the purposes of that provision (see *Akgün v. Turkey* (dec.), no. 19699/18, § 38, 2 April 2019), without however finding a violation in the specific circumstances of the given case. It had regard, in particular, to the Constitutional Court's excessive workload, arising from a sudden and unexpected turn of events, namely the attempted *coup d'état* of 15 July 2016, and to the authorities' endeavours to remedy that situation (ibid., § 44). In contrast, in the above-cited *Kavala* judgment (§ 194), it clearly identified as "excessively long" the period of one year and a half taken to decide on the lawfulness of his detention, holding that it was incompatible with the requirement of promptness, even bearing in mind the workload or the exceptional context arising from the attempted *coup d'état*.

126. The Court also regrets that those cases concerning the non-execution of its own judgments, especially where these concern individual liberty, are not dealt with as matters of priority (see paragraph 109 above). It reiterates in this regard that Article 46 of the Convention places a binding legal obligation

on States Parties to abide by the final judgment of the Court, which implies their full, effective and prompt execution. The failure to grant priority to such cases at the national level therefore seems all the more difficult to reconcile with the above requirement, in that the failure to execute a judgment finding a violation could prolong and exacerbate the breach, already recognised, of the fundamental rights in question. This requirement is particularly important where the Court has found a violation of Article 18 of the Convention taken in conjunction with another provision, revealing a particularly serious abuse of the purpose of proceedings. Increased vigilance is therefore necessary in order to ensure the effectiveness of the Court's judgments and tangible adherence to the rule of law.

127. In the circumstances set out above, the Court concludes that the Constitutional Court's procedural inertia in examining the two individual applications in question has had the effect of reducing the protection afforded at domestic level to a theoretical and illusory right, offering the applicant at best only an uncertain prospect of redress and failing to satisfy the minimum requirements of promptness which a domestic remedy must offer in order to be effective, thus proving incapable of succeeding in good time (see, *mutatis mutandis, Selahattin Demirtaş v. Türkiye (no. 4),* 13609/20, § 159, 8 July 2025).

128. In the light of the foregoing, the Court concludes that, in the specific circumstances of the present case, the applicant cannot be criticised for failing to await the outcome of an individual application to the Constitutional Court, the effectiveness of which was seriously compromised. It would point out, however, that this conclusion is strictly limited to the particular circumstances of the present case and must not be interpreted as calling into question, in general, the effectiveness of an individual application to the Constitutional Court within the domestic legal system.

129. The Court therefore dismisses the Government's objection alleging a failure to exhaust the domestic remedies before the Constitutional Court.

130. Having reached the above conclusion on the particular facts of the present case, the Court also considers it appropriate to reiterate that the deliberate non-implementation of the Constitutional Court's judgments is liable to undermine the rule of law and the effectiveness of the individual appeal to that court in cases concerning human rights (see, *mutatis mutandis*, *Wikimedia Foundation, Inc. v. Turkey* (dec.), no. 25479/19, § 45, 1 March 2022). It takes note of the applicant's argument that, in two cases concerning his co-defendants, the domestic courts have refused to give effect to the Constitutional Court's judgments (see paragraphs 84-94 above). This situation does not result from intrinsic shortcomings relating to the functioning of the Constitutional Court or to its ability to find violations, but instead sheds light, in two sets of proceedings that are closely related to the present case, on a serious difficulty arising from the attitude of certain lower courts with regard to the binding force of that court's judgments.

131. In this connection, the Court attaches particular importance to the considerations expressed by the Constitutional Court itself, to the effect that execution of its judgments is an indivisible component of the right of individual application and that failure to comply with those decisions amounts to a manifest and serious violation of that right. It also subscribes to the Constitutional Court's analysis that the non-execution of its decisions was likely not only to undermine individual and societal confidence in the rule of law, but also to compromise the constitutional order by depriving applicants of the effective application of their recognised rights (see paragraph 88 above). There is no doubt, as the Commissioner for Human Rights has also emphasised (see paragraph 103 above), that such a situation represents serious rule-of-law backsliding and weakens the effectiveness of the individual application in cases that concern human rights.

132. In the Court's opinion, full compliance with the Constitutional Court's binding judgments is essential, since that court is the cornerstone of the national system for protecting the rights and freedoms enshrined in both the Constitution and the Convention. The Court also reiterates that it has already emphasised, in *Mehmet Hasan Altan v. Turkey* (no. 13237/17, § 139, 20 March 2018), that for another domestic court to call into question the powers conferred on a constitutional court to deliver final and binding judgments on individual applications runs counter to the fundamental principles of the rule of law and legal certainty (compare *Vujović and Lipa D.O.O. v. Montenegro (no. 2),* no. 43050/22, §§ 84 and 107, 27 November 2025). The failure to enforce its rulings is likely not only to compromise the Constitutional Court's authority, but also to undermine, more generally, the judicial protection of fundamental rights. The Court will revert to this matter below (see paragraph 314).

II. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

133. The applicant alleged that the criminal proceedings against him, his conviction and the sentence of aggravated life imprisonment, and the resulting deprivation of liberty amount to an unjustified interference with his rights to freedom of expression and freedom of peaceful assembly, in breach of Articles 10 and 11 of the Convention.

134. The Court notes that the questions relating to freedom of expression and freedom of peaceful assembly are closely linked in the present case. Each party submitted arguments under Articles 10 and 11 taken separately. The Court considers that the gist of the applicant's complaints under those provisions concern the allegation that he was prosecuted, detained and convicted on account of his position as head of a non-governmental organisation and his stance as a human-rights defender (see *Taner Kılıç v. Turkey (no. 2)*, no. 208/18, § 130, 31 May 2022, with further references).

Moreover, although the charges against him were very closely linked to those activities, the applicant was also convicted for his presumed role during the Gezi Park events, which could fall within the scope of Article 11 of the Convention. The Court therefore considers it more appropriate to examine these complaints under Articles 10 and 11 of the Convention taken together (see, *mutatis mutandis, Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 Others, § 52, ECHR 2011).

The relevant parts of Article 10 of the Convention provide as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The relevant parts of Article 11 of the Convention read:

> "1. Everyone has the right to freedom of peaceful assembly ....
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others..."

A. Admissibility

1. Compliance with the requirements of Rule 47 of the Rules of Court

135. The Government submitted that the complaints under Articles 10 and 11 had not been sufficiently substantiated, as the applicant had merely relied on the existence of criminal proceedings, his detention and his conviction, without specifying the relevant facts or the nature of the alleged interference. Considering this to be in breach of the requirements of Rule 47 of the Rules of Court, they invited the Court to declare them manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

136. The Court observes at the outset that in his application form the applicant set out all the facts relating to his complaints under Articles 10 and 11 of the Convention and clearly indicated the violations of the Convention that he was alleging. It also points out that the application of Rule 47 falls within its exclusive jurisdiction as regards the administration of proceedings and cannot be relied on by the Contracting States as a ground of inadmissibility under Article 35 of the Convention (see, for example, *Gözüm v. Turkey*, no. 4789/10, § 31, 20 January 2015, and *Aydoğdu v. Turkey*, no. 40448/06, § 53, 30 August 2016; see also *Demirtaş and Yüksekdağ*

Şenoğlu v. Türkiye, nos. 10207/21 and 10209/21, § 73, 6 June 2023). Accordingly, the Court considers that the conditions required for the application of Rule 47 of the Rules of Court have not been met and it dismisses the Government's objection.

2. Application of Article 17

137. The Government submitted that the applicant had been prosecuted not for the exercise of his rights under Articles 10 and 11 of the Convention, but for his central role in organising, directing and financing the Gezi Park events, which had resulted in acts of violence. They argued that the domestic courts had established a link between the applicant's actions and those acts of violence and had confirmed his decisive influence on the organising structures and the calls for demonstrations. In the Government's submission, the acts with which the applicant was charged were acts of violence, which were excluded from the protection of the Convention and fell within the scope of Article 17, with the result that the complaints had to be declared incompatible *ratione materiae*.

138. The applicant disputed the Government's argument and argued that Article 17, designed to prevent abuse of rights with a view to destruction of the rights and freedoms guaranteed by the Convention, was not applicable in the present case. In his submission, the Court in its 2019 judgment had concluded that the evidence adduced by the national authorities did not suffice even to establish the existence of a reasonable suspicion, and he argued that the subsequent proceedings were based on the same facts. He concluded that no action on his part could be viewed as seeking to destroy the rights guaranteed by the Convention, so that Article 17 was irrelevant in the present case.

139. The Court reiterates that Article 17 is applicable only on an exceptional basis and in extreme cases (see *Paksas v. Lithuania* [GC], no. 34932/04, § 87 *in fine*, 6 January 2011). The application of that provision has the effect of negating the exercise of the Convention right that an applicant seeks abusively to assert in bringing proceedings before the Court. In the present case, however, there is nothing to suggest that the applicant was pursuing an aim of that nature. He rightly relies on the Convention provisions to challenge the measures taken against him, which have been held, in part, to rest essentially not only on facts that could not reasonably be classified as criminal offences under domestic law, but also on factors that are largely related to the exercise of rights safeguarded by the Convention (see *Kavala*, cited above, §§ 157 and 220). He thus seeks to obtain from the Court a judgment whose execution at domestic level would be such as to put an end to the effects of those measures. In other words, he is attempting to regain the full enjoyment of rights which the Convention in principle secures to everyone, and which he claims to have been wrongly deprived of by the Turkish authorities. Article 17 of the Convention cannot therefore apply.

3. Conclusion

140. The Court notes that these complaints are not manifestly ill-founded and are not inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

141. The applicant complained that all of the measures taken against him amounted to a violation of his rights to freedom of expression and freedom of assembly, as guaranteed by Articles 10 and 11 of the Convention. He argued that those measures had had no legal basis, did not pursue any legitimate aim and had been manifestly disproportionate. He pointed out that in its 2019 judgment the Court had held that his detention, based on his activities under Articles 10 and 11, was in breach of Article 5 § 1, read alone or in conjunction with Article 18, on the grounds that the authorities had brought criminal proceedings against him with the ulterior purpose of silencing him as a human-rights defender. He considered that that finding had the effect of vitiating all the subsequent proceedings. He alleged, however, that despite the judgments delivered in 2019 and 2022, the authorities had persisted in taking measures to restrict his exercise of the rights in question.

142. The applicant also submitted that the proceedings brought against him and his conviction under Article 312 of the Criminal Code had not been "prescribed by law". He alleged that the offence in question had not been defined with sufficient clarity and that it had not been applied in a foreseeable manner to his situation, which, in his view, amounted to a violation of Articles 7, 10 and 11 of the Convention.

143. The applicant submitted that the evidence relied on by the Government as material evidence of the use of force and violence within the meaning of Article 312 of the Criminal Code related essentially to his lawful activities as a civil-society actor and human-rights defender or was based on unsubstantiated allegations. He noted that the evidence against him included: purported contacts with foreign organisations, including OTPOR/Canvas; foreign trips; the receipt of funds from the Open Society Foundation, unrelated to any criminally punishable activity; accusations concerning his alleged influence on Taksim Platform and Taksim Solidarity, without any demonstrated participation in their meetings; the provision of gas masks, protective goggles and food to the demonstrators; and the preparation of reports, meetings and exchanges with international organisations and NGOs, including the Council of Europe. He also mentioned his voicing of critical views, the documentation of alleged human-rights violations during the Gezi

Park events and his interactions with various actors. He argued that none of these factors, taken alone or in combination, made it possible to establish that he had used force or violence, or that he had been involved in organising, directing, funding or inciting such acts, or that there was a causal link between his activities and the violence that had occurred.

144. The applicant also alleged that the constituent elements of the offence, both material and mental, were absent, and that the domestic courts had based their decisions on legal activities and speculative inferences. He submitted that the case-law relied on by the Government, concerning contexts involving armed participants, could not be transposed to his situation and that the application of Article 312 of the Criminal Code disclosed a political aim. He submitted that, at the hearing before the Assize Court, he had stressed the total absence of evidence linking him to violent acts or to groups having had recourse to violence. He disputed the description of the Gezi Park events as an attempt to overthrow the government by force, emphasising that the institutions had continued to function normally and that dialogue had been opened with civil society. He added that the allegations about the involvement of terrorist organisations were not based on any specific investigation and that no such link had been established with him, noting lastly that parallel sets of proceedings had resulted in acquittals, which, he submitted, served to weaken the argument of the domestic courts.

145. With regard to the mental element in particular, the applicant considered that the evidence used against him – including a photograph, telephone conversations about the organisation of meetings, or his denunciation of the use of excessive force by the police, and contacts with the European institutions – related solely to the legitimate exercise of his rights under the Convention. He submitted that those activities had been unjustifiably treated as an attempt to overthrow the government by force, thus disregarding the very purpose of Article 312 of the Criminal Code, which, in his view, excluded from the scope of the offence those activities that were protected by fundamental freedoms.

146. The applicant submitted that his conviction, the sentence imposed, and the resulting continued detention had had the effect of permanently depriving him of the effective exercise of his rights to freedom of expression and of peaceful assembly, a situation which has continued for several years. In consequence, the impugned measures could not, in his opinion, be regarded as pursuing a legitimate aim, prescribed by law or necessary in a democratic society.

(b) The Government

147. The Government maintained, as their primary submission, that there had been no interference with the exercise of the applicant's rights under Articles 10 and 11 of the Convention. They justified the measures taken against the applicant by the fact that he was accused of having led, organised

and financed non-peaceful demonstrations, acts which, in the Government's view, did not come within the protected exercise of the rights to freedom of expression and of peaceful assembly. In that connection, they referred to the findings of the domestic courts, established on the basis of a body of evidence (statements, witness statements, telephone tapping, financial and technical reports, searches, surveillance, open sources and police reports), and holding that there existed a link between the applicant's actions and the violence that occurred during the Gezi Park events.

148. In the alternative, the Government submitted that any interference had been "prescribed by law", had pursued a legitimate aim and had been "necessary in a democratic society". They argued, first, that the applicant's detention and conviction had been based on Article 312 of the Criminal Code, the wording and judicial interpretation of which were sufficiently clear, accessible and foreseeable, and, secondly, that they were compatible with the preconditions for detention set out in Article 100 of the Code of Criminal Procedure.

149. The Government asserted that the impugned measures had been intended to protect national security and public safety and to prevent disorder and crime. They highlighted the scale and duration of the Gezi Park events, which had been marked, according to national reports and information supplied, by multiple violent incidents, resulting in extensive material damage and destruction and leading to deaths and injuries.

150. At the hearing, the Government submitted, in particular, that the domestic courts had identified a causal chain, composed of five elements, which confirmed the applicant's functional contribution to the Gezi Park events. They had noted, first, that the applicant had provided an operational framework, by coordinating meetings with his co-defendants inside his own institutions and entities. Secondly, they had established that the applicant had provided funding and logistical support, especially by financing demonstrators and supplying items for pursuing the clashes with the security forces. Thirdly, they had held that the applicant had coordinated media and diplomatic actions with a view to presenting the events as peaceful demonstrations and to obtaining an international embargo on equipment for law-enforcement personnel. Fourthly, they had noted that the wire-tapping records showed that the applicant had been regularly consulted about key decisions and concluded that he had exercised ongoing strategic leadership. Lastly, they had established the existence of a coercive link, noting that the use made of violent groups had contributed to exerting pressure on the Government's functional capacity.

151. The Government added that the domestic courts had relied on a number of tangible forms of evidence, based essentially on the intercepted communications. In their submission, from 30 May 2013 onwards – that is, from the first day of violent incidents – the applicant had been involved in logistical coordination activities, such as the opening of bank accounts and

providing supplies to the demonstrators. Over the following days, as the violence intensified, the applicant had organised the provision of material and resources (tables, food, equipment) and helped with the purchase of gas masks. Furthermore, he had on several occasions discussed the imposition of an international embargo on tear gas, an approach that the domestic courts had interpreted as an attempt to weaken the State's capacity to restore public order. The domestic courts had also noted the applicant's opposition to the use of a referendum to resolve the matter, a proposal put forward at the height of the events, and that he had taken part in activities to prolong and extend the movement, particularly by setting up forums and coordinating meetings. They had concluded that he exercised a decisive influence within the platforms in question and that the decisions taken within them occurred on his initiative or after consultation with him.

152. Lastly, the Government submitted that the domestic courts had assessed the facts in an acceptable manner, applied criteria which complied with the requirements of Articles 10 and 11 and struck a fair balance between the applicant's rights and the need to protect public order and national security, without exceeding the margin of appreciation afforded to them. They argued that it was not the Court's task to conduct its own assessment of facts which had led national courts to adopt one decision rather than another. They considered that to act otherwise would be tantamount to transforming the Court into a court of fourth instance and overstepping the limits inherent in its role. In consequence, they concluded that there had been no violation of Articles 10 and 11 and invited the Court to dismiss the applicant's complaints.

2. *The third-party interveners*

(a) The Commissioner for Human Rights

153. The Commissioner considered that the present case was part of a wider context of continuing pressure in Türkiye on dissenting voices – human-rights defenders, civil-society organisations, lawyers, journalists and opposition politicians –, concerns that had already been noted by various bodies of the Council of Europe and the United Nations. He pointed out that in the above-cited *Kavala* judgment the Court had ruled on the role of human-rights defenders and NGOs and considered that the failure to implement the requisite general measures was contributing to the persistence of the problems observed. At the close of his visit to Türkiye in December 2025, he had been informed of ongoing and disproportionate restrictions on freedom of expression and freedom of assembly, obstruction of journalists and lawyers, and criminal and administrative pressure on civil-society actors. He also placed the case in a wider context, characterised by extensive recourse to criminal law and anti-terrorist legislation. In this connection, he reiterated his concerns about the use of Articles 217, 299

and 301 of the Criminal Code and of certain anti-terrorist provisions, and noted that Articles 125, 216, 220, 312 and 314 of the Criminal Code had also been interpretated very broadly. Referring to the Venice Commission's opinions and the supervision by the Committee of Ministers, he emphasised the lack of clarity and foreseeability of certain of those provisions and their extensive application, which was liable to result in disproportionate penalties, including for conduct protected by the Convention. He submitted that, in practice, the national courts did not always establish a specific link between the alleged offences and violence or incitement to violence; this pointed, in his opinion, to structural shortcomings that had not been remedied through general measures.

(b) The intervening NGOs

154. In their joint observations, the Clooney Foundation for Justice, the Fair Trials Clinic at the University of Amsterdam, TrialWatch and Professor Göran submitted that Article 312 of the Criminal Code lacked clarity and foreseeability, particularly with regard to the scope of the expression "to prevent [the government] from discharging its duties" and the definition of the mental element, ambiguities comparable to those found with regard to the offences of "subversion" and "sedition". The Association for Freedom of Expression submitted that this provision had been applied in an extensive and unforeseeable manner, without any concrete causal link or a specific intention to use violence, in breach of the principle of *nullum crimen sine lege*. The Union of Bars Associations of Türkiye expressed the same criticisms and pointed out that no offence could be held to have been committed without an actual interference with a protected legal interest, that only tangible acts capable of creating a real threat could constitute the material element – to the exclusion of preparatory acts or mere "psychological force" – and that the offence required special intent, failing which criminal liability could not be asserted.

3. *The Court's assessment*

(a) Whether there has been an interference

155. The Court must first ascertain whether the measures complained of amounted to an interference with the applicant's exercise of his rights to freedom of expression and of peaceful assembly. In order to answer that question, the scope of the measures must be determined by putting them in the context of the facts of the case. Having regard to the circumstances of the present case and the nature of the allegations made, the Court considers that this issue should be examined in the light of the general principles emerging from its case-law on the assessment of evidence (see *Baka v. Hungary* [GC],

no. 20261/12, § 143, 23 June 2016). In so doing, it will examine the facts of the case and the sequence of events "in their entirety" (ibid., § 144).

156. At the outset, the Court observes that although the Assize Court held that, taken together, the acts in respect of which the applicant was charged and convicted reflected a strategic role in the context of an attempted insurrection (see paragraph 48 above), those acts consisted essentially of activities involving participation in public debate, coordination and support for civil-society initiatives, logistical facilitation of meetings, dissemination of information of general interest and awareness-raising and advocacy activities linked to the Gezi Park events (see paragraphs 23-25, 35 and 48-57 above). By their very nature, those activities fall within the scope of the exercise of the rights to freedom of expression and peaceful assembly, guaranteed by Articles 10 and 11 of the Convention.

157. In accordance with the relevant international instruments and the Court's settled case-law (see *Kavala*, cited above, § 76, and *Taner Kılıç (no. 2)*, cited above, § 145), the Court emphasises the particular importance of the role of human-rights defenders and civil-society organisations in a democratic society, particularly when they contribute to informing the public and supervision of the authorities' actions. The Court has recognised that an NGO which intervenes on matters of public interest is exercising a "public watchdog" role of similar importance to that of the press (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 103, ECHR 2013 (extracts), and *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 166, 8 November 2016) and warrants similar protection on that account. It follows that the principles applicable to criminal proceedings against journalists are transposable, *mutatis mutandis*, to those against human-rights defenders, in particular where they concern acts directly linked to the exercise of their activities (see *Taner Kılıç (no. 2)*, cited above, § 147).

158. The Court further notes that the Government's argument to the effect that the applicant played a central role in the organising, leadership and financing of the Gezi Park demonstrations, and that this role allegedly resulted in acts of violence, cannot, in itself, deprive the applicant of the protection of Articles 10 and 11 of the Convention. It is clear from the Court's settled case-law under Article 11 of the Convention that an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, provided that the individual in question remains peaceful in his or her own intentions or behaviour (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 94, ECHR 2015, with further references).

159. Having regard to the nature and characteristics of the acts allegedly committed by the applicant, the Court cannot subscribe to the Government's argument that the impugned measures did not interfere in any way with his rights to freedom of expression or to freedom of peaceful assembly. It

considers that the criminal proceedings brought against the applicant, his detention in that context and his conviction, in so far as they were based on acts directly linked to his activity as a human-rights defender or his involvement in the Gezi Park events, amounted to interference with the exercise of his rights to freedom of expression and freedom of peaceful assembly.

(b) Whether the interference was justified

160. Such interference will breach Articles 10 and 11 of the Convention unless it satisfies the requirements of the second paragraph of those provisions. It thus remains to be ascertained whether the interference was "prescribed by law", pursued one or more of the legitimate aims as set out in those paragraphs and was "necessary in a democratic society" in order to achieve them.

(i) Application of the relevant principles in the present case

161. Under Articles 10 and 11 of the Convention, the general principles as to whether an interference was "prescribed by law" – to which the Court refers – have been set out in *Danileţ v. Romania* ([GC], no. 16915/21, §§ 119-24, 15 December 2025). They are similar to those concerning the lawfulness of an interference under Article 11 of the Convention (see *Kudrevičius and Others*, cited above, §§ 108-10).

162. In the present case, the Government claimed that the alleged interference had been prescribed by law, specifically by Article 312 of the Criminal Code as interpreted by the Court of Cassation. Although the applicant did not dispute that the interference had a legal basis in domestic law, he considered that the interpretation and application of that provision in his case fell short of the lawfulness requirement laid down in the second paragraph of Articles 10 and 11 of the Convention. What is at stake in the present case is, therefore, the "quality" of the law in question, in particular, whether it was foreseeable as to its effects (see *Kudrevičius and Others*, cited above, § 108) and complied with the rule-of-law criterion under the second paragraphs of Articles 10 and 11 of the Convention.

163. In this regard, the Court notes that Article 312 of the Criminal Code introduced a specific type of offence, and that this provision states that "[a]nyone who attempts to overthrow the Government of the Republic of Türkiye by force and violence or to prevent it, whether fully or in part, from discharging its duties shall be sentenced to aggravated life imprisonment" (see paragraph 83 above). It is clear from the judgment convicting the applicant (see paragraphs 48-58 above) that the Assize Court did not accuse the applicant of having personally committed acts of violence or of having caused material damage. Nor did it seek to establish whether the applicant had directly participated in the violence that occurred during the Gezi Park

events, or had called for such violence. Nonetheless, it held that he was criminally liable, finding that he had played a strategic role in the planning, coordination or leadership of the events (see paragraph 48 above), and that in the context of collective action, liability could extend to any person who had a decisive influence on how the events unfolded, or who had made an essential contribution to them. On that basis, the violence and its consequences were attributed to the applicant as foreseeable consequences of a movement that he had allegedly supported and organised.

164. Thus, the applicant had been held to be criminally liable as a result of indirect reasoning, based on a cumulative attribution of acts of violence committed by third parties, without a direct or intentional link with the accusations being made out. The Assize Court thus replaced examination of personally imputable acts with a global assessment of the applicant's conduct, finding that a combination of factors, not in themselves punishable and falling within the exercise of Convention rights — such as civil-society activities, lobbying, international contacts or organisational and financial support for non-violent demonstrations — was sufficient to make out the material element of the offence set out in Article 312 of the Criminal Code. Furthermore, the case-law relied on by the Assize Court in support of its reasoning relates exclusively to military or armed contexts, which are irrelevant for the situation of a civilian or for demonstrations falling within the scope of Article 11 of the Convention and cannot be used to justify the assertion of a foreseeable interpretation of the provision in question (see paragraph 56 above). Such an approach amounts to equating the exercise of protected freedoms to acts constituting an exceptionally grave criminal offence, and raises serious issues regarding the foreseeability of the criminal law and adherence to the principle of the rule of law.

165. According to the Court's consistent case-law, Article 11 protects peaceful assemblies and ceases to apply only where the organisers or participants pursue violent aims, incite violence or reject the foundations of a democratic society; the mere fact of tension, sporadic violence or disturbances is not sufficient to deprive a demonstration of its peaceful nature (see *Kudrevičius and Others*, cited above, §§ 92-98). The fact that third parties with violent intentions are present at a demonstration or that there is a risk of disorder outside the control of those organising it cannot, as such, place the demonstration outside the scope of Article 11 § 1, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision (ibid., § 94; see also *Frumkin v. Russia*, no. 74568/12, § 99, 5 January 2016). Equally, the organisers' criminal liability cannot be engaged in the absence of direct participation in, incitement to or accommodation with acts of violence (see *Selahattin Demirtaş (no. 4),* cited above, § 236). Where violence does occur, it is for the authorities to take all reasonable measures to ensure the peaceful conduct of the event, and any measures targeting peaceful participants calls for particularly strict review, in order to avoid an

excessively chilling effect on the exercise of the right to peaceful assembly (see *Frumkin*, cited above, §§ 100-42).

166. That was clearly not the situation in the present case. Although, according to the Constitutional Court, the Gezi Park events were to be considered as relating to the exercise of rights guaranteed by the Constitution (see paragraph 94 above), the authorities brought criminal proceedings against the applicant almost four years later, accusing him of attempting to obstruct the functioning of the Government by force and violence within the meaning of Article 312 of the Criminal Code, without however establishing – or even attempting to establish – the existence of a causal link between the acts of violence that occurred and the actions that were imputed to him personally.

167. The Court points out that it has already been required to examine a similar situation. Thus, in the *Selahattin Demirtaş (no. 2)* case (cited above), concerning the pre-trial detention of an applicant who was suspected of serious offences, punishable under Article 314 of the Criminal Code (see paragraph 83 above), detention that was based essentially on his political statements and activity within an opposition political party, it considered that the range of acts that could have justified such detention was excessively broad. It held that the content of that Article, coupled with its interpretation by the domestic courts, did not afford adequate protection against arbitrary interference by the national authorities. In particular, it considered that such a broad interpretation of a provision of criminal law could not be justified where it entailed equating the exercise of the right to freedom of expression with belonging to, forming or leading an armed terrorist organisation, in the absence of any concrete evidence of such a link (see *Selahattin Demirtaş (no. 2),* cited above, §§ 277-80; see also *Selahattin Demirtaş (no. 4),* cited above, § 253). Those considerations apply, *mutatis mutandis*, to the present case.

168. Furthermore, the Court fails to see how activities such as the applicant's contacts with civil-society actors in order to support the Gezi Park demonstrations, his exchanges with international actors, including Council of Europe bodies, his research work, the organising of meetings and exchanges with international organisations and NGOs, the voicing of critical opinions on the use of tear gas and its exportation to Türkiye, the documentation of alleged human-rights violations during the Gezi Park events, discussion meetings in cultural centres and contacts with academics, journalists and democratic actors, can, in themselves, form the basis for criminal proceedings. Such activities are part of the normal exercise of freedom of expression, as protected by Article 10 of the Convention, in that they promote the circulation of information and ideas on matters of general interest and a critical appraisal of the actions of public authorities, and also contribute to public debate, including at international level. They are also part of the legitimate role of human-rights defenders and civil-society actors, whose

importance in a democratic society the Court has consistently emphasised, in particular when they draw attention to allegations of violations of fundamental rights (see *Magyar Helsinki Bizottság*, cited above, §§ 166-67). In this connection, the Court reiterates that freedom of expression protects not only the substance of the ideas expressed, but also the form in which they are conveyed (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 87, 20 January 2020), as well as the interactions, exchanges and forms of cooperation necessary for the effective exercise of this right. To equate such activities with criminal conduct cannot therefore be reconciled with the requirements of Article 10 without impairing the very essence of that freedom and producing a chilling effect that is incompatible with the principles of pluralism, tolerance and broadmindedness, hallmarks of a democratic society.

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

170. Such an interpretation is, moreover, liable to have a particularly serious chilling effect on the exercise of the freedoms enshrined in Articles 10 and 11 of the Convention. The prospect of prosecution for an offence punishable by aggravated life imprisonment is likely to discourage not only human-rights defenders and civil-society actors, but also ordinary citizens, from taking part in, organising or providing logistical, financial or intellectual support for peaceful demonstrations (see, *mutatis mutandis*, *Frumkin*, cited above, § 141). Applied to nationwide protest movements, such an interpretation entails the risk of an *ex post facto* reclassification of the criminal law when sporadic violence occurs on the margins of gatherings, thus subordinating the exercise of the rights to freedom of expression and peaceful assembly to an obligation to maintain absolute public order, something that is incompatible with the Court's established case-law and liable to deprive Articles 10 and 11 of the Convention of their practical effect.

171. In the light of the foregoing considerations, the Court finds that the manner in which Article 312 of the Criminal Code has been interpreted in the present case in relation to the acts allegedly committed by the applicant during the Gezi Park events had the effect of extending the scope of that provision in an unforeseeable manner, did not afford the requisite minimum protection against arbitrary interference and cannot therefore be regarded as

being "prescribed by law" as required within the meaning of the second paragraph of Articles 10 and 11 of the Convention.

(ii) Conclusion

172. Having regard to the foregoing considerations, the Court concludes that there has been a violation of Articles 10 and 11 of the Convention.

173. It is accordingly unnecessary to examine whether the interference pursued one or more of the legitimate aims listed in the second paragraphs of Articles 10 and 11 or was "necessary in a democratic society". The Court emphasises that, under Article 18 taken together with Articles 10 and 11 of the Convention, it is called upon to determine in the present case whether the impugned measures in fact pursued an ulterior purpose, unrelated to the legitimate aims pursued by the Convention. To this end, it will have to assess not only whether there has been a misuse of power, but also the nature and seriousness of the measures adopted and their practical consequences for the exercise of guaranteed rights. The Court will return to this point below (see paragraphs 265-279).

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

174. Relying on Article 6 §§ 1 and 3 (d) of the Convention, the applicant alleged that the criminal proceedings against him had been unfair. He submitted, in particular, that the conclusions in the Court's judgments had not been taken into consideration by the domestic courts, that those courts had not given sufficient reasons for their decisions, and that they had convicted him on the basis of flawed and manifestly wrongly assessed evidence. He also alleged a failure to observe the principle of equality of arms, in that the domestic courts did not duly examine the defence's objections and requests concerning the admission of evidence and conduct of the proceedings. He also alleged that he had not been tried by an independent and impartial tribunal. Lastly, he argued that the length of the proceedings, taken as a whole, had been excessive.

The relevant parts of Article 6 §§ 1 and 3 (d) of the Convention provide:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights: (...)
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

A. Admissibility

1. “Independent and impartial tribunal”

175. In parallel to their objection of failure to exhaust domestic remedies in that the complaints were premature, which the Court has already examined above (see paragraph 129), the Government raised an objection of failure to exhaust domestic remedies in respect of the complaint regarding the dismissal of the applicant’s request for withdrawal of a judge. They noted that at the hearing of 25 April 2022 the 13th Assize Court had rejected the request for withdrawal of the judge in question, holding that it was aimed at extending the proceedings, and that the applicant had not made use of the appeal provided for in Article 31 § 3 of the Code of Criminal Procedure against that decision. The Government argued that this appeal was nonetheless an effective remedy, as the Court itself had found in *Bahaettin Uzan v. Turkey* (no. 30836/07, 24 November 2020), and that the applicant had neither demonstrated that he had used this appeal nor explained why he was exempted from so doing. They concluded that the complaint alleging that the court in question was not independent or impartial ought to be declared inadmissible for failure to exhaust the domestic remedies.

176. The applicant submitted that his case clearly differed from *Bahaettin Uzan* (cited above), given that he had in fact requested the withdrawal of the judge in question and had raised this complaint both before the appeal court and before the Court of Cassation, after his request had been rejected at the hearing at which he was convicted. He argued that he had thus exhausted the available ordinary remedies and that the Government had not shown how, in the circumstances of the case, an additional appeal based on the Code of Criminal Procedure would have constituted an effective remedy.

177. The Court notes that the applicant’s complaint concerning the right to an “independent and impartial tribunal” comprises two aspects. The first concerns the alleged lack of independence and impartiality, from a subjective perspective, of one of the members of the 13th Assize Court. The second concerns the intervention of the Council of Judges and Prosecutors following the acquittal judgment of 18 February 2020, particularly through the opening of disciplinary proceedings in relation to that decision, which the applicant considered likely to have compromised that court’s structural or objective independence and impartiality. The Court notes that the Government’s objection concerns only the first aspect of the complaint.

178. In this connection, it is not disputed between the parties that the applicant called for the withdrawal of judge M.B. during the proceedings before the first-instance court, the court of appeal and the Court of Cassation (see paragraphs 46, 58 and 64 above). It is not disputed that those remedies are effective in this respect. The Court also notes that, in addition, the applicant raised this complaint in the context of his second individual application to the Constitutional Court (see paragraph **Error! Reference**

source not found. above). It concludes that the applicant exercised one of the effective and available remedies to raise his complaint, and that he was not therefore obliged to lodge the appeal provided for in Article 31 § 3 of the Code of Criminal Procedure (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

179. In the light of the foregoing, the Court notes that the applicant's complaint concerning the right to an independent and impartial tribunal is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *The length of the proceedings*

180. The Government alleged that, since the entry into force of Law No. 7499 on 12 March 2024, amending Law No. 6384, an effective domestic remedy had been introduced for complaints alleging excessive length of proceedings, and that this remedy, permitting a direct application to the compensation committee, including in respect of applications pending before the Constitutional Court or the Court, had been recognised by the Court as effective in the decision *Cebeci and Aslantekin v. Türkiye* ([Committee] (dec.), nos. 2386/24 and 2596/24, 18 June 2024). They concluded that the applicant ought to have applied to the compensation committee and that, given that he had not done so, he had not exhausted the domestic remedies. The applicant disputed that argument.

181. The Court reiterates that, while the rule of exhaustion of domestic remedies may, exceptionally, be assessed in the light of developments subsequent to the lodging of the application, a compensatory remedy is, in principle, an appropriate means to address a violation of the right to be tried within a reasonable time (for further information on the remedy in question, see *Cebeci and Aslantekin*, decision cited above, §§ 16-22). Following the amendments introduced to Law No. 6384, a direct application to the compensation committee is now possible for complaints alleging an excessive length of proceedings, including for pending applications, and offers a reasonable prospect of redress. It follows that the applicant was required to make use of it, and that his complaint regarding the length of the proceedings must be rejected for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

3. *Remainder of the complaints*

182. With regard to the complaints regarding the allegedly insufficient reasoning in the domestic courts' decisions, the applicant's conviction on the basis of flawed or manifestly wrongly assessed evidence, and the alleged breach of the applicant's right to equality of arms in that the defence's objections and requests concerning the admission of evidence and conduct of

the proceedings had not been duly examined, the Court notes that these are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

183. The applicant submitted that the Court's previous judgments in his case had been decisive, in that they related to the same facts and criminal charges, as the Court had acknowledged in 2022, as had the Commissioner for Human Rights and the Committee of Ministers; those bodies had all concluded that the successive criminal proceedings were based on the same factual and prosecutorial core. He argued that his situation had a direct parallel with the case of *Ilgar Mammadov (no. 2)* (no. 919/15, 16 November 2017), in which the Court had held, in the context of infringement proceedings, that the proceedings in issue had concerned the same criminal prosecutions and events.

184. He also submitted that the domestic courts had not drawn the necessary consequences from the Court's judgments, thus failing to comply with their binding nature under Article 46 of the Convention. He noted that in spite of the obligation to secure his immediate release deriving from the 2019 judgment, confirmed by the Court in 2022, his detention and the criminal prosecution had continued, which, in his view, reflected an ongoing refusal to ensure *restitutio in integrum*, with several domestic decisions making no reference to the violations found, including those of Article 18 taken together with Article 5 § 1.

185. The applicant also submitted that the criminal proceedings had been in breach of Article 6 § 1, as the national courts had in his view criminalised lawful activities linked to his participation in civil society, without evidence or convincing reasoning, while dismissing without relevant justification his requests for the hearing of witnesses, effective examination of evidence and access to the telephone-tapping records, in violation of the principle of equality of arms.

186. He further argued that there had been a violation of his right to be tried by an independent and impartial court, in a context marked by public statements from members of the executive, institutional pressures on judges, repeated changes to judicial benches, and the decisive participation of judges with close ties to the ruling party, one of whom had become publicly active in political matters. Taken together and placed in the wider context of attacks on judicial independence in Türkiye, those factors created objectively justified doubts as to the courts' impartiality.

187. Lastly, the applicant argued that the setting aside of his acquittal by the regional court of appeal disclosed a serious lack of impartiality. He submitted that the reasons put forward – namely, the alleged existence of legal or factual links between his case (Article 312 of the Criminal Code), other separate proceedings (Articles 309 and 328 of the Criminal Code) and the so-called football supporters case ("the *Çarşı* proceedings") – had been devoid of any rational legal justification, especially as those files had been separated by the prosecutor's office as early as 2018 and neither the domestic courts nor the Court had found that there was a reasonable suspicion against him (see paragraphs 38-39 above). He further submitted that the participation of one and the same judge, who had successively requested, as President of the 30th Assize Court, and then granted, as Acting President, the joinder of the cases, had constituted a manifest procedural irregularity under domestic law and breached the principle of impartiality guaranteed by Article 6, since a judge could not examine proceedings concerning the same facts twice. In addition, the appointment to the 13th Assize Court of the prosecutor who, in breach of the Court's judgment of 10 December 2019, had successfully appealed against the acquittal judgment delivered by the 30th Assize Court – and had thus already taken a position in the case – was to be considered as an element calling into question the court's impartiality. Taken together, these factors gave rise to objectively justified doubts as to the impartiality of the court.

(b) The Government

188. The Government submitted that the Court's judgments of 2019 and 2022 had related exclusively to the compatibility of the applicant's pre-trial detention, from 1 November 2017 until the date of those judgments, with Article 5, taken alone or in conjunction with Article 18, and that they had not involved any assessment of the criminal proceedings against the applicant under Article 6. They submitted that the present application concerned new complaints, based on different facts, since the criminal proceedings in question had been pending in 2019, the pre-trial detention had ended on 18 February 2020, and the conviction had become final only on 28 September 2023. In their submission, the Court's findings as to the lack of reasonable suspicion under Article 5 could not form the basis for an assessment of the fairness of the criminal proceedings, as those provisions pursued different objectives and were subject to different standards.

189. The Government relied on the principle of subsidiarity and pointed out that the Court could not take the place of the domestic courts in establishing the facts, assessing evidence or interpreting domestic law, except in the event of manifest arbitrariness. They submitted that the criminal proceedings had been conducted in compliance with the guarantees of Article 6, and that the applicant had received an adversarial trial, access to all the evidence against him, the time and facilities necessary for the preparation

of his defence, and the effective assistance of his lawyers. They argued that the evidence – records of telephone tapping, surveillance measures, witness statements, technical data, digital analyses, financial reports and travel documents – had been examined in adversarial proceedings, that its lawfulness had been subjected to thorough review, in particular by the Court of Cassation, and that the subsequent change in legal classification did not affect its validity.

190. With more specific regard to the complaints under Article 6, the Government submitted that these had not been sufficiently substantiated, as the applicant had merely challenged the refusal to hear two witnesses, without showing in concrete terms how that refusal had infringed the principle of equality of arms. They pointed out that the assessment of evidence and of whether witnesses should be heard was primarily a matter for the national courts, which had dismissed those requests on grounds that were relevant and sufficient and were subsequently confirmed on appeal and by the Court of Cassation, given that the witness evidence requested was decisive in the light of the evidence as a whole.

191. Lastly, the Government submitted that the applicant had been tried by an independent and impartial tribunal established by law, composed of pre-existing ordinary courts, whose judges enjoyed constitutional safeguards. They disputed that the disciplinary investigation opened against certain judges had had any impact on the independence or impartiality of the court, as that procedure was separate from the judicial examination of the case. They pointed out that the decisions had been delivered by majority verdicts, that the existence of dissenting opinions was evidence of the judges' freedom of judgment, and that the application for withdrawal, which had been made out of time, had not been supported by any evidence capable of rebutting the presumption of impartiality. Accordingly, they concluded that no violation of Article 6 § 1 of the Convention could be found.

2. *The third-party interveners*

(a) The Commissioner for Human Rights

192. With regard to the independence and impartiality of the judiciary, the Commissioner highlighted the impact of the constitutional and legislative amendments, including those of 2017, on the composition and manner of appointment of the members of the Council of Judges and Prosecutors. He noted a structural problem, arising from the fact that its members were elected by Parliament or appointed by the President, while both the Minister and Deputy Minister of Justice were *ex officio* members, a situation which he considered difficult to reconcile with the standards laid down, in particular, by the Venice Commission, according to which a significant proportion of the members of a judicial council should consist of judges elected by their peers. He also referred to reports on the problematic use of the powers of the

Council of Judges and Prosecutors in career and disciplinary matters, especially in sensitive cases, citing, *inter alia*, the prompt opening of disciplinary proceedings against the judges who had acquitted the applicant and the appointment, in that case, of a judge who had refused to apply the Court's judgment.

193. With regard to the guarantees of a fair hearing, the Commissioner expressed concerns about certain prosecution and trial practices, referring to voluminous and insufficiently reasoned indictments, the use in evidence of material related to the exercise of protected rights, and the use of secret witnesses, capable of affecting the principle of the equality of arms. He also noted the multiplicity of overlapping proceedings and charges, resulting in the excessive complexity and unreasonable length of trials, and situations where release orders had been cancelled out by new detention orders. Lastly, he referred to various obstacles to the rights of the defence, including restrictions on access to clients, files and hearings.

(b) The intervening NGOs

194. In their joint observations, the TLSP, Human Rights Watch and the International Commission of Jurists, on the one hand, and the AEAJ, the EAJ, the "Judges for Judges" Foundation and the MEDEL, on the other, submitted that the present case had arisen in a structural context of a gradual erosion of the independence and impartiality of the judiciary in Türkiye. They contested a succession of constitutional and legislative reforms, in particular the 2017 reform of the Council of Judges and Prosecutors, whose composition – marked by presidential appointments, the *ex officio* presence of the Minister and Deputy Minister of Justice and parliamentary elections – placed, in their view, governance of the judiciary under increased political influence, in contradiction with the European standards that had been reiterated by the Venice Commission and the Committee of Ministers in particular.

3. *The Court's assessment*

(a) Preliminary remarks

195. The Court considers that, having regard to the circumstances of the case, it is called upon to determine whether, taken as a whole, the conduct of the contested proceedings before the Turkish courts was compatible with the applicant's right to a fair hearing by an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. Accordingly, it will examine the applicant's complaints under Article 6 together (for a similar approach, see *Bochan v. Ukraine*, no. 7577/02, § 60, 3 May 2007).

196. The Court reiterates at the outset the relevance and authority of the *Kavala* and *Kavala (infringement proceedings)* judgments (both cited above), delivered in the context of the same criminal proceedings, in which the Court

found violations of Articles 5 §§ 1 (c) and 4, a violation of Article 18 in conjunction with Article 5, and then, in the second judgment, a violation of Article 46. In the above-cited *Kavala* judgment, the Court based its findings on the manifest lack of plausibility of the charges, holding that the detention had been imposed without reasonable suspicion and on the basis of facts that were essentially linked to the exercise of Convention rights. It inferred from this an ulterior purpose of silencing the applicant and a chilling effect on human-rights defenders, and indicated that the applicant should be released immediately. In the above-cited *Kavala (infringement proceedings)* judgment, it found that the respondent State had not acted in good faith under Article 46 § 1. It noted, first, that in spite of certain decisions ordering the applicant's release, and an acquittal, the applicant remained imprisoned, on the basis of facts that had already been found to be insufficient and closely linked to the exercise of Convention rights, and, secondly, that the conviction judgment of 25 April 2022, which was mainly based on the Gezi Park events, had not corrected the defects identified, given that the finding of a violation of Article 18 in conjunction with Article 5 vitiated all of the measures based on those accusations.

197. The present case, however, raises a separate issue, that of the overall fairness of the criminal proceedings under Article 6. Although the applicable provisions differ, these are still the same proceedings, based on the same facts as those resulting in a conviction under Article 312 of the Criminal Code, which the Court has already examined in detail in the above-cited *Kavala* judgment in the light of the requirements of Article 5 of the Convention. The Court must therefore determine whether the initial lack of plausibility of the accusations against the applicant was effectively remedied at the trial stage by sufficient evidence and adequate and convincing reasoning, which requires a careful examination of the facts under Article 6 (for a similar approach, see *Ilgar Mammadov (no. 2)*, cited above, §§ 198-203).

(b) General principles

198. The general principles established in the Court's case-law with regard, first, to the fairness of criminal proceedings and, second, to the requirement of an "independent and impartial tribunal" were reiterated, in particular, in its judgments, to which it refers, in *Yüksel Yalçınkaya v. Türkiye* [GC] (no. 15669/20, §§ 302-08, 26 September 2023) and *Findlay v. the United Kingdom* (25 February 1997, § 73, *Reports of Judgments and Decisions* 1997-I).

199. The Court reiterates that its sole task in connection with Article 6 of the Convention is to examine applications alleging that the domestic courts have failed to observe specific procedural safeguards laid down in that Article or that the conduct of the proceedings as a whole did not guarantee the applicant a fair hearing (see *Semenya v. Switzerland* [GC], no. 10934/21, § 193, 10 July 2025). In addition, the cumulative effect of various procedural

defects may lead to a finding of a violation of Article 6, even where each defect, taken alone, would not have led the Court to conclude that the proceedings were unfair (see *Mirilashvili v. Russia*, no. 6293/04, § 165, 11 December 2008). Moreover, according to the Court's consistent case-law, reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings. It must be clear from the decision that the essential issues of the case have been addressed. In view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal (see *Yüksel Yalçınkaya*, cited above, § 305, with further references).

(c) Application of these principles to the present case

200. In the present case, the Court points to its conclusion, above, that, in the determination of the criminal charges against the applicant, the interpretation given to Article 312 of the Criminal Code in respect of the acts allegedly committed by him in the context of the Gezi Park events had the effect of extending the scope of that provision in an unforeseeable manner, without affording the requisite minimum protection against arbitrary interference, so that it cannot be regarded as being "prescribed by law" within the meaning of the second paragraphs of Articles 10 and 11 of the Convention (see paragraph 170 above). The applicant's complaint under Article 6 of the Convention concerning the allegedly arbitrary application of the criminal law must be examined in the light of those findings.

201. The Court further notes that the criminal proceedings against the applicant were examined successively by three separate judicial formations, at first instance. Following the applicant's acquittal by the Istanbul 30th Assize Court, the judges of that bench were subjected to disciplinary proceedings (see paragraph 32 above). The case was then examined by the Istanbul 36th Assize Court on the basis of a new indictment, partly based on the same facts, before being joined to proceedings pending before the 13th Assize Court (see paragraphs 36-38 above). Those repeated decisions to join, sever and reassign the proceedings led to successive changes in the court responsible for examining the case. While such measures, taken alone, may concern the proper administration of the domestic judicial system and fall within the national authorities' margin of appreciation, their accumulation in

the context of one and the same set of criminal proceedings calls for particularly careful scrutiny in the light of the requirements of independence and impartiality guaranteed by Article 6 § 1 of the Convention. While it is not the Court's role to assess the appropriateness of the reasons which led the national authorities to allocate or reassign a case, it must nevertheless satisfy itself that such allocation or reallocation was compatible with Article 6 § 1, and in particular with the requirements of objective independence and impartiality (see *Bochan v. Ukraine*, no. 7577/02, § 72, 3 May 2007; see also *Moiseyev v. Russia*, no. 62936/00, § 176, 9 October 2008).

202. The Court observes that the acquittal judgment of 18 February 2020 was based on converging grounds: the Istanbul 30th Assize Court had held that the transcripts of the telephone tapping were not legally admissible; that there was nothing in the file, including the MASAK report, to establish that the applicant had financed, organised or encouraged acts of violence during the Gezi Park events; and that the witnesses heard by it had made no incriminating statements. It therefore concluded that there was insufficient legal, concrete and conclusive evidence to convict the applicant under Article 312 of the Criminal Code (see paragraph 30 above). The Court further notes that this acquittal was consistent with the conclusions of its own *Kavala* judgment (cited above, § 143), in which it identified as a central issue the question whether there existed a causal link between the alleged offence and the acts personally imputable to the applicant, in a context where the charges had already been found to be manifestly implausible and closely linked to the exercise of rights guaranteed by the Convention (ibid., § 157). Accordingly, it had been incumbent on the domestic courts, at the trial stage, to carry out a particularly rigorous examination of the facts and to demonstrate convincingly how new, solid and probative evidence had been capable of compensating for that initial shortcoming.

203. However, although the Court's *Kavala* judgment, cited above, had noted the manifest lack of plausibility in the accusations and the close link between the acts for which the applicant was charged and the exercise of rights guaranteed by the Convention (ibid., § 157), the domestic courts did not indicate how the shortcomings in question had been compensated by new evidence, nor did they demonstrate that the applicant's conviction had a sufficiently solid factual basis, the charges remaining essentially unchanged. They did not conduct any genuine analysis of a causal link – which was nonetheless central – between the violence that occurred during the Gezi Park events and the acts imputed to the applicant personally, confining themselves to assigning him a role as organiser or coordinator, without establishing in what way his actions had provoked, encouraged or made possible the violence referred to, or how they could amount to an attempt to overthrow the government by force.

204. A similar shortcoming was noted by the Constitutional Court in the *Tayfun Kahraman* case (see paragraphs 90-96 above), where it held that the

fact of attributing an active role based essentially on statements, publications and civil-society commitments, with no identification of specific remarks or evidence of a concrete link with particular acts of violence, was such as to undermine the fairness of the trial. Those findings can be transposed to the present case: despite the reference to the coexistence of a body of circumstantial evidence, the domestic decisions did not explain how these factors established a concrete link between the applicant's activities and the violence in question. The absence of a "cause-and-effect" analysis, although the offence presupposed the use of force and violence, is a major shortcoming. This is in addition to the refusal, justified in a stereotyped manner, to hear key witnesses requested by the defence, namely S.E. and N.Ç., both former ministers who had been in post at the relevant time (see paragraph 44 above), without adequate procedural counterbalancing or an effective review on appeal and by the Court of Cassation, since the higher courts merely endorsed the first-instance findings without addressing the essential complaints.

205. Lastly, the conviction was based on largely contextual and insufficiently individualised inferences, placing the burden on the accused to refute general hypotheses rather than obliging the authorities to establish, beyond reasonable doubt, the material and intentional elements of the offence. In particular, in establishing the mental and material elements concerning the use of "force and violence", the Assize Court had regard to essentially contextual circumstances, without a specific individual assessment of the facts imputable to the applicant or demonstrating a direct link between his personal conduct and the elements of the offence. It relied on all the violent incidents that had occurred during the Gezi Park events, without even seeking to establish the applicant's personal involvement in those acts, particularly those committed in the vicinity of the Prime Minister's offices and directed against the security forces, although the persons suspected of having directly participated in them had been acquitted on two occasions (see paragraphs 42 and 75 above). It also referred, by analogy, to the deployment of tanks in a context that was wholly unrelated to the present case (see paragraph 56 above). Such an approach raises serious questions as to the overall fairness of the proceedings.

206. The Court therefore considers that in the present case the questions relating to the application of domestic law go beyond the assessment of the applicant's individual criminal liability or the establishment of *corpus delicti*, matters which in principle fall within the jurisdiction of the national courts. In this regard, it emphasises the importance of establishing a clear distinction between assessment of the facts and evidence, which is a matter for the domestic courts, and supervision of compliance with the rights and freedoms guaranteed by the Convention, which is a matter for its own assessment. It transpires from the reasoning of the domestic courts that the applicant was convicted on the basis of facts relating to his exercise of freedoms guaranteed

by the Convention and falling outside the scope of the criminal provision in question, without an attempt to identify or legally establish his specific individual criminal liability in the light of the constituent elements of the offence. In other words, the interpretation of the criminal law was arbitrary and unforeseeable, to the applicant's detriment, leading to a manifestly unreasonable outcome of the trial (see, *mutatis mutandis, Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 115, 23 February 2016).

207. With regard to the independence and impartiality of the bench responsible for the case, the Court reiterates that, according to its settled case-law, this question is to be assessed both subjectively and objectively, taking account of appearances (see *Micallef v. Malta* [GC], no. 17056/06, § 98, ECHR 2009). It should also be noted that the criminal proceedings in question were conducted against a background of numerous public statements by high-ranking State officials incriminating the applicant (see paragraph 260 below), a circumstance which led the Court in *Kavala* (cited above, § 229) to find a violation of Article 5 taken in conjunction with Article 18 of the Convention. The Court considers that in such a context appearances are of particular importance: as the saying goes, "justice must not only be done, it must also be seen to be done" (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86). What is at stake is the confidence which the courts must inspire in a democratic society.

208. In the present case, several converging elements were such as to give rise to legitimate doubts on the part of an objective external observer regarding the independence and impartiality of the courts that were responsible for examining the applicant's case. These doubts are, in the first place, a direct follow-up to the Court's findings in the *Kavala* judgment (cited above, §§ 229 and 232), concerning a violation of Article 18 of the Convention taken in conjunction with Article 5 § 1. In this connection, the Court cannot subscribe to the Government's argument that the disciplinary investigation opened against the judges who acquitted the applicant had no impact on the subsequent proceedings. The opening of that investigation following the acquittal decision in February 2020 – a decision which, moreover, had been in line with the requirements arising from the Court's judgment of 2019 – was, by its very nature, liable to exert dissuasive pressure on the judges concerned and, more broadly, to undermine judicial independence in the subsequent conduct of the proceedings.

209. Moreover, the repeated remittals of the applicant's case from one court to another, as noted above (see paragraph 201 above), and the participation, at the decisive stage of the trial, of a judge with close previous links to the ruling party, serve to reinforce these doubts (see paragraph 46 above). In a context marked by repeated public pronouncements by members of the executive, portraying the applicant as guilty before any final decision had been delivered (see paragraphs 260 and 273 below), the inadequate examination of the defence arguments and the absence of institutional

safeguards capable of dispelling any appearance of bias assume particular importance.

210. Those factors must be assessed in the light of a wider context of structural shortcomings affecting the independence of the judiciary in Türkiye, which have already been noted by the Court and other Council of Europe bodies (see *Selahattin Demirtaş (no. 2)*, cited above, § 434; see also paragraph 192 above), as regards, *inter alia*, mechanisms for the appointment (*Oktay Alkan v. Türkiye*, no. 24492/21, § 69, 20 June 2023), transfer (*Bilgen v. Turkey*, no. 1571/07, § 96, 9 March 2021) and discipline of judges (*Eminağaoğlu v. Turkey*, no. 76521/12, §§ 97 and 105, 9 March 2021), and the repeated failure to execute the Constitutional Court's judgments (see paragraphs 86-96 above).

(d) Conclusion

211. In the light of the foregoing, the Court concludes that there were serious shortcomings in the criminal proceedings against the applicant, affecting both the fairness of the proceedings and the guarantees of the independence and impartiality of the courts. Having regard, more widely, to a structural context undermining the independence of the justice system in Türkiye, the Court also considers that the shortcomings identified in the present case are not mere procedural flaws, but that they reflect a profound deterioration in the judicial context in which the applicant's case was examined. Taken as a whole, these shortcomings fundamentally impaired the very essence of the applicant's right to a fair trial, as guaranteed by Article 6 § 1 of the Convention.

There has accordingly been a violation of that provision.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

212. The applicant considered that having regard to the particular circumstances of the case, his detention since the Court's *Kavala* judgment of 10 December 2019 amounted to an arbitrary deprivation of liberty, in breach of the requirements of Article 5 § 1 of the Convention, the relevant parts of which read:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

... ”

A. Admissibility

1. The parties’ submissions

(a) The Government

213. The Government submitted that the Court did not have jurisdiction *ratione materiae* to examine the complaints under Article 5, as they concerned the execution phase of the judgment of 10 December 2019 and, accordingly, fell within the Committee of Ministers’ exclusive jurisdiction under Article 46. In the Government’s submission, the application lodged on 18 January 2024 was seeking to have re-examined, by means of an individual application, questions that had already been determined, although supervision of the execution was still pending and was subject to close and continuous scrutiny by the Committee of Ministers, covering all of the domestic proceedings, including the rulings delivered on the basis of Articles 309, 328 and 312 of the Criminal Code, the Constitutional Court’s judgment of 29 December 2020, the conviction of 25 April 2022 and the appeal and cassation decisions. They concluded that the complaints under Article 5 related exclusively to the enforcement mechanism and that there were no exceptional circumstances which would justify a fresh examination by the Court.

214. The Government further argued that the applicant’s complaints concerning his detention on the basis of Articles 309 and 328 of the Criminal Code were out of time. They explained that the applicant had been placed in pre-trial detention on 19 February 2020 in relation to the charge under Article 309 of the Criminal Code, before being provisionally released on 20 March 2020 in relation to that offence, and without his having submitted an individual application to the Constitutional Court in respect of that period. Furthermore, on 9 March 2020 he had been placed in detention for the offence under Article 328 of the same Code; he had challenged that measure before the Constitutional Court on 4 May 2020, but on 29 December 2020 the Constitutional Court had found no violation of his right to liberty and security. The applicant had subsequently failed to lodge an application with the Court within the relevant time-limit. Accordingly, the complaints concerning his pre-trial detention between 19 February 2020 and 25 April 2022 ought to be declared inadmissible for failure to comply with the time-limit laid down in Article 35 § 1 of the Convention.

215. The Government also submitted that the applicant had not exhausted the compensatory remedy provided for in Article 141 of the Code of Criminal Procedure, which, in their argument, had been available to him after his final acquittal on the charge of espionage, a remedy recognised as effective by domestic case-law and which made it possible both to challenge the lawfulness of the detention and to obtain compensation.

(b) The applicant

216. The applicant contested the Government's objection that he was raising a complaint that had already been determined by the judgment of 10 December 2019, arguing that there had been a misunderstanding: in his submission, the present application concerned new and distinct violations of Article 5 § 1, which had occurred after delivery of that judgment, and did not in any way concern the failure to execute it. In line with the approach taken in the Court's case-law, those complaints constituted new complaints, relating to detention that was still ongoing and which thus amounted to a continuing violation.

217. The applicant also rejected the argument that the above-cited *Kavala (infringement proceedings)* judgment had already ruled under Article 5 on his complaints in the present application. He argued in this respect that the Court's jurisdiction in the above-cited case had been strictly limited to examining compliance with Article 46 § 1, the Court having expressly stated that it did not have jurisdiction to find a further violation of Article 5 (ibid., § 175). Lastly, with regard to the objection that he had not exhausted the domestic remedies, the applicant pointed out that, according to the Court's settled case-law, compensation proceedings were not an effective remedy for the purposes of putting an end to allegedly unlawful and continuous detention, as the remedy provided for in Article 141 of the Code of Criminal Procedure, which was limited to the award of financial compensation, was not, in his view, capable of remedying such a situation.

2. *The Court's assessment*

(a) The Court's jurisdiction *ratione materiae*

218. The Court observes that the complaint under Article 5 § 1 of the Convention concerns the arbitrary nature of the applicant's deprivation of liberty after the *Kavala* judgment of 10 December 2019 or, at the very least, from the date on which that judgment became final, namely 11 May 2020. The period in question extends from that date until the adoption of the judgment in the present case and, for the purposes of Article 5 § 1, covers legally distinct stages. Until 25 April 2022 the applicant was held in pre-trial detention, a situation that came within the scope of Article 5 § 1 (c). Since his conviction on that date, his deprivation of liberty is covered by Article 5 § 1 (a). The Court has to date not examined whether this latter period is compatible with the Convention, as it is based on the judgment of 25 April 2022, which was subsequently upheld on appeal and by the Court of Cassation. The Court accordingly has jurisdiction to examine it.

219. With regard to the period between 10 December 2019 and 25 April 2022, the Court notes that it partly overlaps with the period examined in the context of the infringement proceedings, until the case was referred to the Court by the Committee of Ministers on 2 February 2022. In the above-cited

Kavala (infringement proceedings) judgment, it had limited its review to the question of the respondent State's compliance with its obligations under Article 46 § 1 and expressly stated that it did not have jurisdiction to find new violations of Articles 5 and 18 (ibid., § 175). It follows that it did not examine on the merits the complaints under Article 5 concerning the continued detention after 10 December 2019.

220. In those circumstances, as in the cases *of Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, § 95, 15 November 2011) and *Selahattin Demirtaş (no. 4)* (cited above, §§ 121 and 122), the present case raises a "new problem", resulting from the alleged persistence of the violation found in *Kavala*, within the meaning of the Court's case-law. The examination of subsequent facts in the context of a separate individual application cannot be regarded as encroaching on the powers assigned to the Committee of Ministers under Article 46. In the absence of such scrutiny, the impugned measures would escape any effective judicial examination, in breach of the object and purpose of the Convention and the right of individual petition guaranteed by Article 34 (see, *mutatis mutandis, Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2) [GC],* no. 32772/02, § 67, ECHR 2009; see also, *mutatis mutandis*, *Selahattin Demirtaş (no. 4)*, cited above, § 123). Accordingly, although the findings in *Kavala (infringement proceedings)* remain clearly relevant for the assessment of the deprivation of liberty in question, they cannot prevent the Court from examining whether the applicant's detention during the period subsequent to the Kavala judgment of 10 December 2019 has been compatible with the substantive requirements of Article 5 § 1 of the Convention. For those reasons, the Court concludes that it has jurisdiction *ratione materiae* to examine the complaints raised in the present case.

(b) Compliance with the time-limit under Article 35 § 1 of the Convention

221. The Court observes, first, that, as the Government have pointed out, on 4 May 2020 the applicant lodged an individual application with the Constitutional Court to challenge his detention, ordered on 9 March 2020 in connection with the offence set out in Article 328 of the Criminal Code (political or military espionage). It notes that in a judgment of 29 December 2020, the Constitutional Court held that there had been no violation of the applicant's right to liberty in respect of either the lawfulness or the length of his pre-trial detention prior to that date (see paragraph 37 above). Relying on that judgment and on the fact that the applicant did not lodge a separate individual application with the Constitutional Court to challenge the detention measure ordered on 19 February 2020 in relation to Article 309 of the Criminal Code, the Government raised an objection that he had failed to comply with the time-limit laid down in Article 35 § 1 of the Convention

222. The Court notes, however, that the applicant's pre-trial detention continued without interruption until 25 April 2022 and that, on 9 June 2022,

he lodged a new individual application with the Constitutional Court, covering all of this period, in which he alleged, in particular, that there had been a violation of Article 5 § 1 in the absence of reasonable suspicion justifying his detention, and he requested that his case be granted priority (see paragraphs 70 and 122 above). Given the close link, both temporal and material, between the different phases of his detention, from the start of his deprivation of liberty until his conviction in 2022, the Court sees no grounds to criticise the applicant for having taken a global approach before the Constitutional Court. In addition, such an approach would have enabled that court to examine all of the situation complained of from the perspective of pre-trial detention.

223. In consequence, with regard to the applicant's pre-trial detention until 25 April 2022, it is the individual application lodged by him with the Constitutional Court on 9 June 2022, and not that lodged on 4 May 2020, which is relevant, both with regard to the exhaustion of domestic remedies under Article 35 § 1 of the Convention and for the purpose of calculating the time-limit laid down in that provision.

224. The Court notes that the individual application lodged on 9 June 2022 is still pending before the Constitutional Court (see paragraph 71 above). It also notes that this individual application was not bound to fail from the outset, given that it has recognised the individual application procedure before the Constitutional Court as, in principle, an effective domestic remedy with regard to complaints under Article 5 (see, among other authorities, *Selahattin Demirtaş (no. 4)*, cited above, § 137). It points out, however, that it has already held that the applicant could not have been expected to await the outcome of a remedy where its practical effectiveness was seriously compromised and that, in consequence, it has dismissed the Government's objection concerning non-exhaustion of the individual application to the Constitutional Court (see paragraphs 117-129 above). The Government's objection that the complaint was out of time must therefore also be dismissed.

(c) Non-exhaustion of domestic remedies

225. With regard to the Government's objection of non-exhaustion of domestic remedies in respect of the applicant's pre-trial detention for the offence laid down in Article 328 of the Criminal Code in the period since his acquittal on 25 April 2022, the Court notes at the outset that the complaint raised under Article 5 § 1 concerns the arbitrary nature of the applicant's deprivation of liberty, a matter that falls outside the main scope of the remedy provided for in Article 141 of the Code of Criminal Procedure (see, *mutatis mutandis, Mergen and Others v. Turkey*, nos. 44062/09 and 4 others, §§ 36-37, 31 May 2016, and also, *a contrario, Adıgüzel and Others v. Turkey*, no. 65126/09, §§ 37-38, 13 February 2018). Furthermore, a remedy that does not afford a possibility of release cannot be regarded as an effective remedy for the purposes of Article 5 § 1 of the Convention while the deprivation of

liberty is ongoing (see *Selahattin Demirtaş no. 2*, cited above, § 207). The Court observes that in the above-mentioned judgment of 25 April 2022, the Assize Court also convicted the applicant of charges related to Article 312 of the Criminal Code, and that the applicant's deprivation of liberty has continued without interruption since 18 October 2017. In those circumstances, it fails to see how proceedings for compensation in relation to an accused's acquittal on one of the charges against him could amount to a remedy that had to be exhausted. The Government's objection on this point must also be dismissed.

(d) Conclusion

226. In the light of the foregoing, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It should therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

227. The applicant submitted that, since the Court's judgment of 10 December 2019 finding a violation of Article 5 § 1 on account of the lack of reasonable suspicion, he had been subjected to a continuous and arbitrary deprivation of liberty, underpinned by an unchanged factual basis that had already been deemed insufficient and was largely linked to the exercise of rights guaranteed by the Convention. He argued that although the formal legal grounds for his detention varied (Articles 309, 312 and 328 of the Criminal Code), the authorities had relied on the same set of facts, giving rise to a series of releases followed by immediate arrests, successive reclassifications of his offence and orders to extend his detention without any new evidence, amounting in his submission to a continuing violation of Article 5 § 1, both in respect of the pre-trial detention (Article 5 § 1 (c)) and of his post-conviction detention (Article 5 § 1 (a)).

228. The applicant submitted that the identical nature of the facts underpinning those measures has been recognised by the dissenting judges of the Constitutional Court, the Committee of Ministers and the Commissioner for Human Rights, and that the Grand Chamber, in its judgment of 11 July 2022, had confirmed that the 2019 findings vitiated any subsequent measure based on the same factual context, as legal reclassification could not justify a new detention in the absence of substantial new facts; this also applied to the charge of espionage. Lastly, he considered that his post-conviction detention was also in breach of Article 5 § 1 (a), arguing that, given the Court's finding in 2019 that there had been a violation of Article 18 taken together with

Article 5 § 1 on account of an ulterior purpose, namely reducing him to silence, any deprivation of liberty resulting from such prosecutions was arbitrary and resulted from a flagrant denial of justice, incompatible with Article 5 § 1 (a).

(b) The Government

229. The Government submitted that the applicant's detention after the *Kavala* judgment of 10 December 2019 did not disclose any violation of Article 5 § 1. They pointed out that that judgment had become final only on 11 May 2020 and considered that the examination under Article 5 should, in principle, concern the period after that latter date, while also submitting observations in the alternative for the interim period. They argued that the Istanbul 30th Assize Court had taken the Court's judgment into account as early as December 2019, requesting its translation and verifying whether it was final, and it had held that the Court's judgment was not binding before 11 May 2020. In any event, the detention referred to in the 2019 judgment had ended on 18 February 2020 with the applicant's acquittal and the order for his provisional release.

230. The Government further argued that the deprivations of liberty occurring after 18 February 2020 had been based on separate proceedings and on new facts and evidence. They pointed out that the initial investigation had been divided into proceedings relating to the attempted coup of 15 July 2016 (Article 309 of the Criminal Code) and those relating to the Gezi Park events. After his acquittal on 18 February 2020, the applicant had been placed in detention on 19 February 2020 under Article 309 of the Criminal Code, on the basis of new evidence, before being granted provisional release on 20 March 2020. The detention ordered from 9 March 2020 under Article 328 of the Criminal Code (military and political espionage) had resulted from new evidence gathered at the end of the investigation, in particular concerning the activities of H.J.B., and had had a sufficient factual basis, given that the Constitutional Court had found in its decision of 29 December 2020 that the given detention was lawfully justified and proportionate (for a summary of that judgment, see *Kavala (infringement proceedings),* cited above, §§ 60-65).

231. Lastly, the Government stated that the detention under Article 328 of the Criminal Code had ended with the acquittal of 25 April 2022. They submitted, however, the applicant had been convicted on the same day under Article 312 of the Criminal Code and placed in detention pending appeal. That situation fell within the scope of Article 5 § 1 (a), given that the conviction had been pronounced by a competent court in accordance with a procedure prescribed by law. The detention had had an accessible and foreseeable legal basis, had been ordered in accordance with a lawful procedure, and effective remedies were available. In conclusion, the applicant's detention subsequent to the Court's judgment of 10 December

2019 had not been based on the same facts as those examined in the above-cited *Kavala* judgment, the domestic courts had taken that judgment into account, and the requirements of Article 5 § 1 had been complied with. The Government therefore invited the Court to find that there had been no violation.

2. The Commissioner for Human Rights

232. The Commissioner for Human Rights noted that pre-trial detention continued to be frequently used in criminal proceedings and pointed out that the Court had already found, in several cases, instances of arbitrary or excessively prolonged detention, in particular of journalists and civil-society actors. He emphasised that, according to international standards, such a measure had to remain exceptional, strictly regulated and subject to effective supervision by the courts. He also noted the existence of shortcomings both in the review mechanisms and in the length of those detentions.

3. The Court's assessment

233. The general principles established in the Court's case-law with regard to Article 5 § 1 of the Convention have been reiterated, among other authorities, in *Denis and Irvine v. Belgium* [GC] (nos. 62819/17 and 63921/17, §§ 123-132, 1 June 2021), to which the Court refers.

234. The Court reiterates, as already indicated above (see paragraph 218), that the applicant's complaint under Article 5 § 1 of the Convention concerns the allegedly arbitrary nature of his deprivation of liberty in the period since the above-mentioned *Kavala* judgment of 10 December 2019. The period in issue extends from that date until the adoption of the judgment in the present case and, for the purposes of Article 5 § 1, covers legally distinct stages. Until 25 April 2022 the applicant was held in pre-trial detention, a situation falling within the scope of Article 5 § 1 (c) of the Convention. From his conviction on that date onwards, his deprivation of liberty has amounted to detention "after conviction" within the meaning of Article 5 § 1 (a) of the Convention. It is therefore appropriate to examine those two periods separately.

(a) The period between 10 December 2019 and 25 April 2022

235. The Court notes that between 18 October 2017 and 18 February 2020 the applicant remained in pre-trial detention on the basis of suspicions related to the Gezi Park events (Article 312 of the Criminal Code) and, in part, to the attempted *coup d'état* of 2016 (Article 309 of the Criminal Code). In its judgment of 10 December 2019, it held that those suspicions were insufficient and were based in large part on facts related to the exercise of rights guaranteed by the Convention (see *Kavala*, cited above, § 157). Although that period is not the subject matter of the present case, those findings remain

relevant for the assessment of the lawfulness of the subsequent detention under Article 5 § 1.

236. After the judgment of 10 December 2019, the applicant was returned to pre-trial detention on successive occasions on the basis of the same evidence, under different criminal classifications (Article 309, then Article 328 of the Criminal Code), without any substantively new fact having been established, as the Court held in *Kavala (infringement proceedings)* (cited above, § 166). As no new evidence was added to the case file between 2 February 2022 – the date on which the case was referred to the Court by the Committee of Ministers (see paragraphs 15, 69 and 219 above) – and 25 April 2022 – the date of his conviction –, the findings of that judgment remain valid for the whole of the period concerned.

237. The Court reiterates that, according to its established case-law, detention may be arbitrary even where it complies with domestic law, in particular where there are no reasonable grounds for suspicion or where it is based on bad faith on the part of the authorities (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and others, §§ 74 and 76, 22 October 2018). The requirement that there should be no arbitrariness also implies that both the order to detain and the execution of that measure genuinely conform to the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 of the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 69, ECHR 2008). Furthermore, the absence of arbitrariness also implies that there must be a reasonable relationship of proportionality between the ground relied on and the detention measure, the length of the deprivation of liberty being a relevant factor in striking that balance, and the intensity of the Court's scrutiny varying according to the nature of the detention in question (see, *mutatis mutandis, James, Wells and Lee v. the United Kingdom*, nos. 25119/09 and 2 others, § 195, 18 September 2012, and *Saadi*, cited above, § 70).

238. In the present case, however, after 10 December 2019 the domestic courts extended the applicant's detention on the basis of evidence that had already been found to be insufficient, without demonstrating the existence of a strong suspicion or relevant grounds for detention, or envisaging alternative measures, contrary to the requirements of Article 100 of the Code of Criminal Procedure (see paragraph 84 above; see also *Lütfiye Zengin and Others v. Turkey*, no. 36443/06, § 83, 14 April 2015).

239. In these circumstances, the Court considers that the authorities sought to circumvent the requirements of both domestic law and the Convention in order to maintain the applicant in detention, acting in a manner incompatible with the conclusions and spirit of the above-cited *Kavala* judgment. Such conduct, characterised by a lack of good faith (see *Kavala (infringement proceedings),* cited above, § 173), contravenes the principle of legal certainty, is arbitrary and runs counter to the rule of law (see, *mutatis mutandis, Mikhaniv v. Ukraine*, no. 75522/01, §§ 87-88, 6 November 2008,

and *Korban v. Ukraine*, no. 26744/16, § 150, 4 July 2019). The previous findings under the second paragraphs of Articles 10 and 11, concerning the lack of foreseeability in the interpretation of domestic law (see paragraph 171 above), point in the same direction and strengthen this conclusion.

240. In consequence, the Court concludes that the applicant's deprivation of liberty between 10 December 2019 and 25 April 2022 was arbitrary and entailed a violation of Article 5 § 1 of the Convention.

(b) The period after 25 April 2022

241. The applicant's detention after 25 April 2022 was based on the judgment in which the 13th Assize Court found him guilty of the offence set out in Article 312 of the Criminal Code and sentenced him to life imprisonment. Such detention normally falls within the scope of the restriction permitted by Article 5 § 1 (a) of the Convention (see *Vorontsov and Others v. Ukraine*, nos. 58925/14 and 4 others, § 43, 21 January 2021, with further references).

242. The applicable general principles have been summarised by the Court in *Del Río Prada v. Spain* [GC] (no. 42750/09, §§ 123-26, ECHR 2013) and *Ruslan Yakovenko v. Ukraine* (no. 5425/11, §§ 45-50, ECHR 2015).

243. According to the case-law of the Convention institutions, the requirement in Article 5 § 1 (a) that a person be lawfully detained after "conviction by a competent court" does not imply that the Court has to subject the proceedings leading to that conviction to comprehensive scrutiny and verify whether they have fully complied with all the requirements of Article 6 of the Convention. However, the Court has also held that if a conviction is the result of proceedings which were a "flagrant denial of justice", that is, were "manifestly contrary to the provisions of Article 6 or the principles embodied therein", the resulting deprivation of liberty would not be justified under Article 5 § 1 (see *Gumeniuc v. the Republic of Moldova*, no. 48829/06, § 24, 16 May 2017, with further references).

244. The Court reiterates that it has held that the assessment of a "flagrant denial of justice" is a stringent test of unfairness, going beyond mere procedural irregularities or shortcomings. A flagrant denial of justice presupposes a breach of the principles of a fair trial guaranteed by Article 6 of such gravity that it results in a negation or destruction of the very essence of the right guaranteed. Although the Court has not yet defined this concept exhaustively, it has nevertheless indicated that some forms of unfairness may reach this threshold, including: conviction *in absentia* with no subsequent possibility of a fresh determination of the merits of the charge; a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed; a deliberate and systematic refusal of access to a lawyer, especially for an individual detained

in a foreign country; and the use in criminal proceedings of statements obtained as a result of torture (see *Willcox and Hurford v. the United Kingdom* (dec.), nos. 43759/10 and 43771/12, § 95, 8 January 2013, with further references; *Hammerton v. the United Kingdom*, no. 6287/10, §§ 98-99, 17 March 2016; and *Al-Hawsawi v. Lithuania,* no. 6383/17, §§ 245-47, 16 January 2024).

245. In the present case, for the reasons set out below, the Court considers that the applicant's conviction, which has served as the basis for his detention since 25 April 2022, resulted from proceedings that constituted a flagrant denial of justice (compare *Vorontsov and Others*, cited above, §§ 42-49). It notes that it has already found that the applicant's criminal conviction, delivered on 25 April 2022, and subsequently upheld on appeal and then on points of law, was in breach of Article 6 § 1 of the Convention. The considerations which led to this finding indicate that the applicant was convicted at the close of criminal proceedings which were vitiated by serious and fundamental shortcomings, affecting the fairness of the procedure and the guarantees of the independence and impartiality of the courts (see paragraph 211 above). Having regard to the seriousness of these shortcomings, which disclose an arbitrariness going beyond a mere error in the interpretation or application of domestic law, the Court considers that, in the particular circumstances of the present case, there is a sufficient basis for concluding that the applicant's detention "after conviction", in which he is still being held, was not "lawful" within the meaning of Article 5 § 1 (a) of the Convention (see, *mutatis mutandis, Stoichkov v. Bulgaria*, no. 9808/02, § 58, 24 March 2005; *Gumeniuc*, cited above, § 26; and *Vorontsov and Others*, cited above, §§ 43-50).

246. Moreover, the Court refers to its conclusions under Articles 10 and 11 of the Convention, finding that the manner in which Article 312 of the Criminal Code was interpreted in the present case in relation to the acts allegedly committed by the applicant in the context of the Gezi Park events extended the scope of that provision in an unforeseeable manner, did not guarantee the required minimum protection against arbitrary interference, and cannot therefore be regarded as "prescribed by law" within the meaning of the second paragraphs of Articles 10 and 11 of the Convention (see paragraph 171 above). This conclusion means that the applicant was convicted on the basis of activities that are protected by the Convention. Having regard to the nature and scope of those findings concerning the conviction of 25 April 2022, and to the link between that conviction and the applicant's subsequent detention, the Court concludes that the detention in question was in breach of Article 5 § 1, as the applicant could not have foreseen to a reasonable degree that his actions would entail a deprivation of liberty (compare *Del Río Prada*, cited above, §§ 125 and 130, in which the finding of a violation of Article 7 on account of the unforeseeable interpretation of domestic criminal law also led to a finding of a violation of Article 5 § 1 on the same grounds).

247. Given its clear causal link with the conviction of 25 April 2022, delivered at the close of proceedings which reached the threshold to be considered a flagrant denial of justice, the applicant's subsequent detention cannot be regarded as "lawful" within the meaning of Article 5 § 1 (a). The previous findings under the second paragraphs of Articles 10 and 11, concerning the lack of foreseeability in the interpretation of domestic law (see paragraph 171 above), point in the same direction and strengthen this conclusion.

248. Accordingly, the Court concludes that the applicant's detention, resulting from the execution of the sentence imposed on him, amounts to a violation of Article 5 § 1 of the Convention.

(c) Conclusion

249. In the light of the foregoing, the Court concludes that the entire period of the applicant's deprivation of liberty since 10 December 2019 has not been compatible with the requirements of Article 5 § 1 of the Convention. The applicant's detention between 10 December 2019 and 25 April 2022 was arbitrary, in that it was not based on reasonable grounds pursuing any of the legitimate aims set out in the Convention. Furthermore, the authorities acted in bad faith, seeking alternative grounds to ensure the continuation of the applicant's detention and to circumvent the requirements of domestic law, in particular those arising from Article 100 of the Code of Criminal Procedure. Nor can the applicant's detention after that date, based on the execution of a sentence imposed following proceedings in which there was a flagrant denial of justice, be regarded as "lawful" within the meaning of Article 5 § 1 of the Convention. It stems directly from a conviction judgment that was incompatible with the fundamental guarantees of a fair trial, which means that the ensuing deprivation of liberty has no permissible legal basis under the Convention.

250. In consequence, the Court concludes that the applicant's deprivation of liberty, viewed as a whole since 10 December 2019, has entailed a violation of Article 5 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

251. Relying on Article 18, taken in conjunction with Articles 5 § 1, 6 § 1, 10 and 11, the applicant complained that his Convention rights have been restricted for purposes other than those prescribed in the Convention.

Article 18 of the Convention reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. Admissibility

1. The parties' submissions

(a) The Government

252. In addition to their objection of non-exhaustion of domestic remedies based on the allegedly premature nature of the complaints, already examined above (see paragraph 129), the Government submitted, first, that the complaint under Article 18 of the Convention, taken in conjunction with Article 6, was incompatible *ratione materiae* with the provisions of the Convention. In their view, Article 18 could be applied only where there was a restriction on a right that was subject to limitations under the Convention, thus excluding Article 6, which contained no express or implied restrictions.

253. Secondly, the Government argued that the complaint under Article 18 taken in conjunction with Article 5 of the Convention fell outside the Court's jurisdiction under Article 46 of the Convention. They pointed out that the Court had already found a violation of Article 18 taken in conjunction with Article 5 § 1 in its *Kavala* judgment of 10 December 2019, the execution of which was still subject to supervision by the Committee of Ministers. In the Government's submission, the applicant was thus seeking to have the Court re-examine questions that concerned the execution of that judgment, which was exclusively a matter for the Committee of Ministers, except where infringement proceedings were instituted under Article 46 §§ 4 and 5.

(b) The applicant

254. The applicant challenged the Government's arguments and submitted that the objections raised to dismiss the examination of Article 18 were unfounded, as the present application concerned a new period, subsequent to the judgment of 10 December 2019, and separate facts, relating to the continuation of his detention, the conduct of the trial and his subsequent conviction. He also argued that Article 18, taken together with Article 6 of the Convention, was applicable. In that connection, he pointed out that Article 18 had been conceived as a transversal mechanism for preventing the misuse of power, intended to act as a "wake-up call" to authoritarian tendencies operating under the cloak of legality, and that the drafters of the Convention had note intended to limit its application to certain specific rights.

2. The Court's assessment

255. In so far as the applicability of Article 18 is concerned, the Court reiterates that, in the light of its case-law, this provision cannot have an independent existence and can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that the High Contracting Parties have undertaken to secure to those under their jurisdiction. Although there can be a breach of

Article 18 even if there is no breach of the Article in conjunction with which it applies, a breach can only arise if the right or freedom at issue is subject to restrictions permitted under the Convention (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 287-88 and 290, 28 November 2017).

256. In the light of these principles, no question arises when assessing the applicability of Article 18 taken in conjunction with Articles 5, 10 and 11 of the Convention (ibid., § 287 *in fine*). Furthermore, in *Ukraine v. Russia (re Crimea)* [GC] (nos. 20958/14 and 38334/18, §§ 1137-38, 25 June 2024), the Court held that the rights protected under Article 6 are guarantees with reference to which fundamental abuses by a State may be likely to manifest themselves. Therefore, trials before a court must never be used for "ulterior purposes" and thereby undermined. It concluded that Article 18 could be applied in conjunction with Article 6 of the Convention.

257. In the light of the above considerations, the Court considers that Article 18 is applicable taken in conjunction with Article 6 of the Convention. With regard to the Government's objection concerning Article 18 taken in conjunction with Article 5, it refers to its conclusion that the issues raised under Article 5 § 1 fall within the jurisdiction of the Court, which accordingly has jurisdiction *ratione materiae* to examine them (see paragraph 220 above). It therefore declares admissible the complaints under Article 18 taken in conjunction with Articles 5 § 1, 6 § 1, 10 and 11 of the Convention.

B. Merits

1. *The parties' submissions*

(a) The applicant

258. The applicant submitted that there had been a violation of Article 18 of the Convention, taken in conjunction with Articles 5, 10 and 11, since 10 December 2019 (date of the *Kavala* judgment, cited above), and taken in conjunction with Article 6 since his conviction on 25 April 2022. He relied on the Court's findings in its 2019 judgment, stating that the same factual elements and political motivations had continued to permeate all subsequent proceedings, despite the obligations arising from the 2019 and 2022 judgments.

259. In support of this argument, the applicant referred to a series of concordant inferences indicating a persistent ulterior purpose, namely to silence and punish him as a human-rights defender. He complained, in particular, of the use of irrelevant evidence, the continued lack of a clear and coherent account of the facts, the equating of legitimate civil-society activities with the constituent elements of criminal offences, the presence of clear procedural irregularities, successive detentions based on the same facts but under different classifications, and the failure to implement the Court's judgments in good faith.

260. The applicant pointed out, in particular, that, as the Court had noted in *Kavala* (cited above, §§ 61 and 229), the highest-ranking State official had given several public speeches concerning the Gezi Park events, in which he had explicitly accused the applicant of financing "terrorists" in order to "destroy this country" and of supporting the acts in question. He emphasised that his name had been expressly mentioned and that he had been presented as the "national pillar" of the Gezi operation, and that the acquittal judgment in his favour was subsequently also the subject of public criticism (see *Kavala (infringement proceedings)*, cited above, § 56). He added that statements of this nature, made by the highest public authorities, had continued to be issued throughout the proceedings. In this connection, he stressed the existence of a close and continuous correlation between those public statements and the judicial decisions, including after his final conviction, reinforcing the appearance of a political instrumentalisation of the criminal justice system. He considered official statements made after his conviction, allegedly challenging the legitimacy of the Court's decisions and stigmatising him personally, as additional evidence confirming the pursuit of a political objective unconnected with the administration of justice. In that context, he requested that the burden of proof be reversed, arguing that it was for the Government to show that the proceedings against him and his conviction had not been politically motivated, and that the Government had clearly failed to do so.

(b) The Government

261. The Government emphasised the difference in nature and scope between the *Kavala* judgment of 10 December 2019 and the present application. They pointed out that the 2019 judgment had dealt exclusively with the lawfulness of the applicant's detention from 1 November 2017 onwards under Article 5 § 1 (c), and with the existence of an ulterior purpose on that date, and had contained no examination of the subsequent criminal proceedings or the applicant's conviction. They reiterated their argument that the facts examined in the present case were new and that the legal regimes had been different at the relevant time. They concluded that the Court was required to conduct an autonomous and separate assessment, without automatically transposing the conclusions reached in the context of Article 5 § 1 (c) in 2019 to the subsequent complaints under Articles 6, 10 and 11. They considered, in particular, that the applicant could not rely on alleged non-execution of the previous judgments to allege a breach of Article 18, since each combination of Article 18 with another Convention provision required a specific demonstration of the existence of an ulterior purpose.

262. The Government also maintained that the criminal proceedings had been conducted in compliance with the rule of law and did not disclose any evidence of political instrumentalisation. They submitted that the applicant had had the benefit of all the guarantees of a fair trial: access to the case file,

the assistance of a lawyer, the possibility of challenging the evidence, and the examination of his arguments by courts that were independent, impartial and established by law, applying the ordinary rules of criminal procedure. The Government submitted that the domestic courts had established the material and mental elements of the offence, giving reasons, without reversing the burden of proof, and had based their findings on settled and foreseeable case-law relating to Article 312 of the Criminal Code. Furthermore, the acts of which the applicant stood accused had been acts of violence linked to the Gezi Park events, which were thus excluded from the protection of Articles 10 and 11, and his conviction had pursued the legitimate aims of protecting national security and public safety, and the prevention of crime. Accordingly, his pre-trial detention and subsequent post-conviction detention had been aimed solely at ensuring the proper conduct of the proceedings and the execution of a judicial decision, and no predominant political objective could be established. In conclusion, the Government invited the Court to find that there had been no violation of Article 18, taken alone or in conjunction with Articles 5, 6, 10 and 11 of the Convention.

2. *The third-party interveners*

(a) The Commissioner for Human Rights

263. The Commissioner reiterated that the work of civil society and human-rights defenders was an essential element of effective democracy and that States were required to ensure a safe and enabling environment for the exercise of civil liberties, in line with the commitments reaffirmed at the Reykjavík Summit in May 2023. He invited the Court to consider that the alleged violations formed part of a wider context affecting the exercise of the rights to freedom of expression and of peaceful assembly, that persistent difficulties with judicial independence – including the role of the Council of Judges and Prosecutors – and certain prosecutorial practices had undermined the guarantees of a fair trial, and that the delays in the examination of individual applications by the Constitutional Court, and the refusal of lower courts to execute that court's judgments, disclosed shortcomings affecting the independence and impartiality of the judicial system.

(b) The NGOs

264. In their joint observations, the TLSP, the ICJ and HRW denounced, in particular, recurring practices used to circumvent Convention obligations, such as the reclassification of the same facts as new offences in order to extend detention, the cancelling out of release orders by new arrest warrants, cooperation with the Council of Europe that was essentially formal in nature, and, sometimes, an explicit refusal to execute judgments. In their view, the ongoing non-execution of the *Kavala* judgments was emblematic of a

political will to maintain repression, despite the Court’ s findings of violations.

3. The Court’s assessment

265. The Court refers to the general principles concerning the interpretation and application of Article 18 of the Convention as set out, *inter alia*, in *Merabishvili* (cited above), *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 164-65, 15 November 2018), and *Selahattin Demirtaş (no. 2)* (cited above, §§ 421-22).

266. The Court notes that the applicant complains in substance of a misuse of power, consisting in depriving him of his personal liberty, charging him and convicting him on account of his positions and activities as a human-rights defender. In those circumstances, it considers that the present application raises a question, under Article 18 of the Convention, as to whether the measures complained of have been implemented for purposes other than those provided for in the Convention. It therefore considers that the complaint of a violation of Article 18 of the Convention is a fundamental aspect of the case, distinct from the conclusions reached above, and that, in consequence, it requires a separate examination.

267. The Court also reiterates that, as the political process and adjudicative process are fundamentally different, it must base its decision on “evidence in the legal sense”, in accordance with the criteria laid down by it in the *Merabishvili* judgment (cited above, §§ 310-17), and on its own assessment of the specific relevant facts (see *Khodorkovskiy v. Russia*, no. 5829/04, § 259, 31 May 2011, and *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 155, 17 March 2016). Moreover, according to the Court’s case-law in this area, it has no reason to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations (see *Merabishvili*, cited above, § 316), since, depending on the circumstances of the case, the existence of an ulterior purpose cannot always be proved with reference to specific evidence which clearly discloses a real reason (for example, a written document, as in *Gusinskiy v. Russia*, no. 70276/01, § 75, ECHR 2004-IV), a specific isolated incident, as in *Merabishvili* (cited above), or the fact that the applicant was questioned in the context of events that are unrelated to the pending criminal case (see *Kavala*, cited above, § 222). It is accordingly necessary to ascertain in the present case whether there is evidence that the measures taken by the national authorities were in fact motivated by an ulterior purpose.

268. The Court refers at the outset to its conclusions under Articles 10 and 11 (see paragraph 172 above), Article 6 (see paragraph 215 above) and Article 5 § 1 of the Convention (see paragraph 250 above). It notes that the applicant was found guilty on the basis of an unforeseeable interpretation of the criminal law, in relation to activities that are protected by the Convention and following criminal proceedings which disclosed serious shortcomings,

affecting the fairness of the proceedings and the independence and impartiality of the courts. It has also concluded that the applicant's detention was arbitrary until his conviction on 25 April 2022 and that it could not, after that date, be regarded as lawful, given that it was based on a flagrant denial of justice. Thus, it has found that the entire period of deprivation of liberty after the judgment of 10 December 2019 was not compatible with Article 5 § 1 of the Convention.

269. As to whether there existed an ulterior purpose within the meaning of Article 18 of the Convention, the Court notes that the applicant's complaints mainly concern his continued deprivation of liberty, his prosecution and his conviction on political grounds, aimed at silencing and punishing him as a human-rights defender. It emphasises that the applicant's case cannot be regarded as an isolated incident, since it must be placed in the context of the detention of other political opponents, human-rights defenders and journalists who have been detained and charged to a large extent with manifestly exaggerated criminal offences (see *Kavala*, cited above, § 231; *Selahattin Demirtaş (no. 2),* cited above, § 438; and *Yüksekdağ Şenoğlu and Others v. Türkiye*, nos. 14332/17 and 12 others, § 638, 8 November 2022; see also, among several other cases in which the Court did not find a violation of Article 18, *Sabuncu and Others v. Turkey*, no. 23199/17, § 182, 10 November 2020; *Şık v. Turkey (no. 2),* no. 36493/17, § 139, 24 November 2020; and *Taner Kılıç (no. 2),* cited above, § 112).

270. For the reasons set out below, the Court considers that the present case is part of this general context, the combination of facts in this case being similar to that observed in the above-cited cases. Having regard to all the information in its possession, it considers that it can be established beyond any reasonable doubt that the evidence required in relation to the criteria set out in paragraph 267 above follows from a combined assessment of the relevant case-specific facts with contextual factors (for a similar approach, see *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 106, 14 October 2021; *Kutayev v. Russia*, no. 17912/15, § 137, 24 January 2023; and *Zarema Musayeva and Others v. Russia*, no. 4573/22, § 87, 28 May 2024).

271. First, an assessment under Article 18 of the Convention of the applicant's detention after 10 December 2019 cannot be dissociated from the Court's previous findings in respect of his initial detention, which was held to be in breach of Article 18 taken in conjunction with Article 5 § 1. In its judgment of 10 December 2019, the Court noted that the indictment of 19 February 2019, which gave rise to the conviction of 25 April 2022, did not present a clear and coherent statement of the facts, but merely compiled evidence of limited relevance, based essentially on lawful activities protected by the Convention. It also noted the absence of reasonable suspicion against the applicant, an aspect that could corroborate the existence of an ulterior purpose, consisting in silencing him and dissuading civil-society actors. The

Court notes that those findings remain entirely relevant in the present case, as the subsequent criminal proceedings did not provide any new, concrete and tangible evidence capable of dispelling the concerns expressed by it as to the real purpose of the criminal prosecution. In particular, despite the clear connection between the facts that gave rise to the detention of 18 October 2017 and those relied on to support the detention of 9 March 2020 in relation to espionage, the authorities did not provide any legal justification, in the light of the afore-mentioned judgment, which would have provided an explanation as to why the charges brought against the applicant had been reclassified.

272. Secondly, with regard to the judicial proceedings in the applicant's case, the Court has already held that they were marred by serious shortcomings which affected both the fairness of the procedure and the guarantees of the independence and impartiality of the courts (see paragraphs 205, 208 and 211 above). Although the offences with which the applicant was charged and of which he subsequently convicted were particularly serious, the core constituent elements could not reasonably be regarded as having been established on the basis of the existing facts (see, *mutatis mutandis, Yunusova and Yunusov v. Azerbaijan* (no. 2), no. 68817/14, § 190, 16 July 2020). In fact, the conviction is based on inferences that are largely contextual and insufficiently individualised, placing the onus on the applicant to refute general hypotheses rather than requiring the authorities to demonstrate, beyond all reasonable doubt, the material and mental elements of the offence (see paragraph 205 above). Such an approach, which substitutes a contextual construction for the precise establishment of acts personally attributable to the applicant, supports the hypothesis that, beyond their formal basis, the measures taken against the applicant pursued an aim other than that provided for by the Convention. The Court has also noted the existence of converging elements capable of giving rise to legitimate doubts on the part of an objective external observer as to the independence and impartiality of the courts which examined the case (see paragraph 208 above). In those circumstances, the manner in which the proceedings were conducted not only failed to dissipate the already existing serious suspicions of predominant ulterior motives behind the applicant's prosecution, but rather contributed to strengthening them (see, *mutatis mutandis, Sytnyk v. Ukraine*, no. 16497/20, §§ 156-57, 24 April 2025).

273. Thirdly, the Court must take into account certain contextual circumstances. Referring to various international instruments, the applicant and the third-party interveners accuse the executive branch, among other things, of exerting influence on the judiciary. The Court considers, however, that the decisions given in the applicant's favour demonstrate that it would be disproportionate to call into question the independence of the entire judicial system and that it cannot be concluded that the judiciary acted on the instructions of the executive. Similarly, statements by high-ranking officials relied on by the applicant (see paragraph 260 above) cannot, in themselves,

establish the existence of an ulterior purpose. That being said, the Court considers that the public statements regarding the proceedings brought against the applicant, made by the highest State authorities and difficult to reconcile with the principle of the presumption of innocence, are of particular importance in a context characterised by the weakening of the judiciary. In this connection, it is appropriate to note that the concerns about a lack of judicial independence under the new constitutional regime, highlighted by the Venice Commission (see paragraph 99; see also *Selahattin Demirtaş (no. 2),* cited above, § 434), shed light on an institutional environment that is likely to favour the executive's influence over certain judicial decisions, particularly in sensitive cases such as the present one. The proceedings were thus conducted in a climate marked by repeated public statements concerning the applicant's guilt, made well before the conclusion of those proceedings. Such particularly accusatory interventions contributed to creating an environment of political and media pressure that was capable of affecting both the appearance and the reality of independence and impartiality on the part of the courts dealing with the case. Such a context undermines the guarantees of a fair trial and raises doubts as to the ability of the courts to reach their decisions safe from any external influence.

274. Fourthly, as the Court noted in the *Kavala* judgment (cited above, § 222), the investigating authorities did not seek to establish the applicant's actual involvement in acts of violence linked to the Gezi Park events or the attempted *coup d'état*. Throughout the proceedings their investigations focused on exchanges and activities that were not directly linked to those events, including contacts with journalists, academics, representatives of non-governmental organisations or foreign States, as well as various civic initiatives and visits by international delegations. This approach was confirmed at the trial stage, when the domestic courts, in showing that the offence had been made out, accepted acts that were essentially related to the applicant's civic, associative and political activities, and not individualised acts of violence. The use of such evidence as a basis for a criminal conviction reveals that the prosecution was not primarily aimed at penalising acts of violence, but was, in substance, aimed at punishing and dissuading from the exercise of activities which related to public debate and participation in civil society. In these circumstances, the impugned measures cannot be regarded as pursuing one of the legitimate aims enumerated in the Convention. The use of criminal proceedings against the applicant and his deprivation of liberty appears, having regard to all the circumstances, to have served an ulterior purpose of restricting the exercise of the rights guaranteed by Articles 10 and 11, in breach of Article 18 of the Convention.

275. Thus, all of the circumstances set out above show that the measures taken by the authorities pursued an ulterior purpose, namely the stifling of pluralism and limiting freedom of political debate, which is at the very core of a democratic society and of European public order (see, among other

authorities and *mutatis mutandis*, *Associazione Politica Nazionale Lista Marco Pannella and Radicali Italiani v. Italy*, no. 20002/13, § 79, 31 August 2021, and *Bradshaw and Others v. the United Kingdom*, no. 15653/22, § 112, 22 July 2025). The Court must therefore ascertain whether this ulterior purpose was the predominant purpose of the measures in question; this assessment must be based on an overall analysis of all the circumstances of the case, taking into account the nature and seriousness of the alleged aim, in the light of the Convention's purpose, which is to safeguard the values of a democratic society based on the rule of law.

276. In this respect, the applicant's situation is one of exceptional gravity and is highly emblematic. It is distinguished both by the duration and intensity of the interference with the applicant's fundamental rights and by implications which go far beyond his individual situation. The applicant's prolonged deprivation of liberty, which has continued despite an acquittal judgment at the domestic level and two legally binding judgments in which the Court found serious violations, discloses a particularly serious challenge to the essential guarantees inherent in the principle of the rule of law.

277. The applicant has been deprived of his liberty without interruption since 18 October 2017, with no new, relevant and convincing factual elements having been adduced to justify his continued imprisonment. On the contrary, the authorities have resorted to a succession of proceedings, legal reclassifications and detention orders, which have had the practical effect of neutralising the legal consequences of binding decisions in the applicant's favour and ensuring that his detention is extended, in particular by circumventing the safeguards provided for by domestic law. The exceptional length of that detention, its continuation in the persistent absence of plausible suspicion, and the extreme severity of the penalty imposed – based on acts closely linked to the exercise of rights guaranteed by the Convention – are concurring indications of the use of criminal-law measures for purposes unrelated to those provided for by the Convention. This situation has had the effect of silencing the applicant, excluding him on a long-term basis from social and public life and exposing him to prolonged legal uncertainty. It culminated in the imposition of a sentence of aggravated life imprisonment on 25 April 2022, imposed not for acts of violence for which he had been found personally liable, but for activities that essentially involved the expression of opinions, civic engagement and participation in public debate, thus sending a chilling message to civil society as a whole.

278. Lastly, it should be stressed that in March 2024 the Council of Europe Commissioner for Human Rights described the *Kavala* case as the most obvious symbol of the Turkish authorities' ongoing hostility towards human-rights defenders and civil society, particularly on account of the repeated refusal to execute the Court's legally binding judgments (see paragraph 101 above). Those observations, issued by an independent and authoritative body, confirm that the measures taken against the applicant were

part of a process of marginalisation and targeted deterrence. The present case thus reveals an instrumentalisation of the criminal law by means of successive sets of proceedings, legal reclassifications and repeated detentions, the effect of which is to circumvent the fundamental procedural guarantees and neutralise the authority of judicial decisions, at both domestic and international level.

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

Accordingly, the Court finds that there has been a violation of Article 18 taken in conjunction with Articles 5 § 1, 6 § 1, 10 and 11 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE IRREDUCIBLE NATURE OF THE SENTENCE

280. The applicant submitted that the life sentence imposed on him, without the possibility of conditional release, amounted to a violation of Article 3 of the Convention, which is worded as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' submissions

281. The Government pleaded a failure to exhaust domestic remedies. They argued that the applicant had not raised his complaint under Article 3 of the Convention, regarding the impossibility of conditional release, in his individual application to the Constitutional Court. They submitted, however, that the Court had already held in its previous case-law that an individual application to the Constitutional Court was an effective remedy for this type of complaint. Thus, as the applicant had failed to make use of that remedy, the complaint ought to be declared inadmissible on this point.

282. Moreover, the Government submitted that the mere absence of a finding by the Constitutional Court of a violation did not suffice to demonstrate that that remedy was ineffective, and that, in consequence, there was no need to depart from the consistent case-law recognising its effectiveness. They acknowledged, however, that the Constitutional Court had not yet examined a complaint of this nature on the merits, and that certain applications had been dismissed on procedural grounds rather than on the merits. They also noted that, in two cases, the Constitutional Court had reclassified the facts before dismissing the applications on procedural

grounds, and had not specifically ruled on the question of an aggravated life sentence without the possibility of conditional release.

283. The applicant disputed the Government's objection of non-exhaustion. In this regard, he alleged that no effective remedy had been available under domestic law. He argued, in particular, that the absence of any review mechanism for the aggravated life sentence imposed on him amounted to a violation of Article 3 of the Convention.

2. The Court's assessment

284. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after the exhaustion of those domestic remedies that relate to the breaches alleged and are also available and sufficient. The Court further notes that it is incumbent on the Government pleading non-exhaustion to satisfy it that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Molla Sali v. Greece* [GC], no. 20452/14, § 89, 19 December 2018, with further references).

285. The Court also reiterates that in *Kaytan v. Turkey* (no. 27422/05, § 56, 15 September 2015) it held that the irreducible nature of aggravated life imprisonment in Türkiye was a direct consequence of domestic legislation, so that the applicant had no effective domestic remedy at his disposal to challenge his situation. Noting also that the Government had not shown that a relevant remedy existed at the material time, it had dismissed the objection of failure to exhaust domestic remedies. It took a different approach, however, in its subsequent decision in *Tekin and Baysal v. Turkey* ((dec.), nos. 40192/10 and 8051/12, § 27, 4 December 2018), finding that none of the material in its possession suggested that the Constitutional Court would be incapable of examining such complaints under Article 3 of the Convention. This approach, reproduced in certain subsequent decisions (see, *inter alia*, *Günay and Yamalak v. Turkey*, no. 6675/10, 30 April 2019), points to a change in its case-law in this area.

286. In the present case, the Court observes, as it noted in the above-cited *Kaytan* decision, that the irreducible nature of aggravated life imprisonment arises directly from the national legislation. Without it being necessary to rule *in abstracto* on the relevance of individual applications to the Constitutional Court in order to challenge such measures, it notes that since the judgment in *Öcalan v. Turkey (no. 2)* (nos. 24069/03 and 3 others, § 207, 18 March 2014), it has found a shortcoming in the domestic law in this regard, while, in the

period since the above-cited *Tekin and Baysal* decision, it has dismissed a similar complaint for failure to exhaust the domestic remedies. In the present case, however, the Government, which bear the burden of demonstrating the effectiveness of this remedy in practice, have indicated that no individual application lodged by litigants has given rise to an examination on the merits of a similar complaint. In those circumstances, having regard, on the one hand, to the absence of Constitutional Court case-law in respect of such complaints, despite the use of this remedy by litigants, and, on the other, to the fact that the impugned measure stems directly from the legislation in force, the Court considers that, as in the *Kaytan* judgment (cited above), the individual application referred to by the Government cannot be regarded as effective in order to challenge the irreducible nature of the sentence in issue. Accordingly, it dismisses the objection that the domestic remedies were not exhausted.

287. In the light of the foregoing, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

288. The Court reiterates at the outset that, according to its settled case-law, the imposition of an irreducible life sentence is incompatible with Article 3 of the Convention (see, in particular, *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and others, §§ 107-31, ECHR 2013 (extracts)). It emphasises that such a sentence is in breach of the requirements of this provision where it does not provide for any mechanism allowing for the possibility of release, even conditional, or any review of the justification for the detention in the light of developments in the convicted person's situation. In the Turkish context, the Court has already had occasion to apply those principles in several cases, in particular in *Öcalan (no. 2)* (cited above, §§ 193-207), *Kaytan* (cited above, §§ 63-68), *Gurban v. Turkey* (no. 4947/04, §§ 30-35, 15 December 2015) and *Boltan v. Turkey* (no. 33056/16, § 42, 12 February 2019), in which it noted that "aggravated life imprisonment", laid down for certain serious offences, especially those against the State or the constitutional order, entailed the convicted person's continued detention for the remainder of his or her life, without the possibility of conditional release or a review based on individualised considerations.

289. In the present case, the Court notes that the applicant's conviction and sentence are based on Article 312 of the Criminal Code, which punishes offences against the constitutional order; those are among the offences for which application of the mechanisms for conditional release and for limitation on the enforcement of sentences is ruled out. It follows that the applicant is deprived of any prospect of release and that there is no domestic

mechanism allowing for review of the sentence in the light of changes in his personal situation or the degree of danger posed by him. In those circumstances, the Court reiterates that the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole-life sentence and not at a later stage of incarceration (see *Vinter*, cited above, § 122). Noting that no new evidence in the case file nor any example of domestic case-law provides a basis for calling into question its findings in *Öcalan (no. 2)* (cited above), it concludes, for the same reasons, that there has been a violation of Article 3 of the Convention in the present case.

VII. OTHER ALLEGED VIOLATIONS

290. The applicant complained of several other violations of the Convention: under Article 3, he submitted that the exceptional length of his detention – maintained despite two judgments by this Court, and the prolonged uncertainty as to his fate, had caused him mental suffering of an intensity comparable to prohibited treatment; under Article 5 § 4, he accused the Constitutional Court of failing to rule "speedily" on his individual applications challenging his pre-trial detention; relying on Article 6 § 2, he alleged a breach of the presumption of innocence, on account of repeated public statements by high-ranking State officials describing him as a criminal, and the incriminating portrayal of him in a series broadcast by a public television channel; lastly, he alleged that his conviction had been contrary to Article 7 of the Convention, taken separately or in conjunction with Article 18, in the absence of a foreseeable legal basis, given that, in his submission, the elements of the offence set out in Article 312 of the Criminal Code – in particular the use of force or violence and the intention to overthrow the government – had been neither established nor demonstrated in the evidence examined by the domestic courts.

291. The Government, which raised several objections as to admissibility, invited the Court to declare those complaints inadmissible or, alternatively, to find that there had been no violation of the Convention.

292. The Court observes that the applicant's deprivation of liberty has already been examined in detail under Article 5 § 1 of the Convention, and that in the course of that assessment it considered both the arbitrariness of the impugned measure and the general context in which it was imposed (see paragraph 249 above). It also notes that the consequences of this detention have been analysed under Article 18 of the Convention (see paragraphs 276-277 above). As to the complaint under Article 5 § 4, the Court refers to its analysis under Article 5 § 1 (see paragraph 249 above), and notes that this complaint is closely linked to the question of the promptness of individual applications to the Constitutional Court, a matter that has already been examined in the context of its assessment of the exhaustion of domestic

remedies and the effectiveness of that remedy in the present case (see paragraphs 115-129 above).

293. With regard to the complaint under Article 6 § 2, the Court notes that the issues concerning the presumption of innocence have been duly taken into consideration, first as part of the assessment of the overall fairness of the proceedings under Article 6 § 1 (see paragraph 209 above) and, secondly, within the analysis of the complaint under Article 18, particularly with regard to the allegation of misuse of criminal proceedings and of stigmatisation of the applicant (see paragraph 273 above). Lastly, with regard to the complaint under Article 7 of the Convention, taken separately or in conjunction with Article 18, the Court notes that its findings of a violation of Articles 10 and 11 are based, in particular, on the absence of foreseeability of Article 312 of the Criminal Code (see paragraph 172 above), while the violation of Article 6 § 1 arises, *inter alia*, from the domestic courts' failure to provide reasoning with regard to the constituent elements of the offence (see paragraphs 203-206 above).

294. In those circumstances, having regard to its findings under the above-mentioned provisions and the close connection between the complaints raised, the Court considers that it is not necessary to examine separately the admissibility and the merits of the complaints under Article 3 (in so far as it concerns the length and consequences of the detention), Article 5 § 4 and Article 6 § 2, or of Article 7 taken separately or in conjunction with Article 18 (compare *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, §§ 225-29, 11 December 2025).

VIII. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 41 of the Convention

295. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

296. The applicant asked the Court to award him just satisfaction in the amount of 70,000 euros (EUR) in respect of the non-pecuniary damage resulting from the continuing violations of the Convention since 10 December 2019, submitting that the mere finding of a violation did not constitute sufficient redress in view of the exceptional length of his detention and the serious damage to his personal and professional life and to his reputation.

297. The Government contested this claim.

298. Having regard to the gravity of the violations found, as well as their cumulative and prolonged effects on the applicant's personal situation, the Court awards the full sum claimed by the applicant, that is, EUR 70,000, in respect of non-pecuniary damage.

2. Costs and expenses

299. The applicant requested reimbursement of the costs and expenses incurred during the proceedings before the Chamber and the Grand Chamber. In support of his claim, he submitted, among other items, a copy of the contract concluded on his behalf by his wife with Mr Leach and Ms Çalı. He indicated that the applicable hourly rate was EUR 100 for the proceedings before the Chamber and EUR 250 for those before the Grand Chamber. He also submitted an itemised record of the time spent on the case by his representatives. The applicant also claimed EUR 134.57 for postal costs, and submitted supporting documents. He thus calculated the total sum of his costs and expenses to be EUR 43,342.57.

300. The Government contested these claims. They considered that the amounts claimed were excessive and unsubstantiated, particularly with regard to the number of working hours billed and the appliable hourly rates. They therefore invited the Court to reject the claim or, at the least, to reduce considerably the amount claimed.

301. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, it notes that the applicant has produced detailed supporting documents, specifically a contract and a detailed record of the time spent on the case by his representatives. It also notes that the present case, which has given rise to an examination by both the Chamber and the Grand Chamber, is a particularly complex and important one. Having regard to the sensitive nature of the case, what is at stake in it, the examination by the Grand Chamber and the particularly voluminous nature of the case material, made up of multiple document files, neither the number of hours charged nor the hourly rates applied can be regarded as unreasonable. In those circumstances, and having regard to the supporting documents provided, it finds it reasonable to award the applicant the full sum claimed, that is, EUR 43,342.57, in respect of costs and expenses.

B. Article 46 of the Convention

302. The relevant parts of Article 46 of the Convention provide as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ...”

303. Under Article 46, the applicant asked the Court:

– to hold that the continuing violations found in the present case result from the Turkish authorities’ manifest refusal to comply with a binding judgment of the Court;

– to indicate to the respondent State that it is required to put an immediate end to the violations and to redress their effects, in particular by ensuring his immediate release and acquittal;

– to find that there has been a systemic failure by the national courts, including the Constitutional Court, to protect against arbitrary detention, and to order that the domestic courts fully comply with the Convention standards as interpreted by the Court;

– to order that he be allowed to resume fully his professional and human-rights activities without risk of prosecution or an arbitrary deprivation of liberty in the future;

– to require the Turkish authorities to put an end to retaliatory prosecutions, prevent the repetition of similar practices and adopt the necessary general measures, in view of the serious chilling effect of the present case on civil society and human-rights defenders in Türkiye.

304. The Government contested all these requests.

305. The Court reiterates that under Article 46 of the Convention the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers (see, among other authorities, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 655, 9 April 2024). In other words, a total or partial failure to execute a judgment of the Court can engage the State Party’s international responsibility. The State Party in question will be under an obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to take individual and/or, if appropriate, general measures in its domestic legal order to put an end to the violation found by the Court and to redress the effects, the aim being to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded. In exercising their choice of individual measures, the State party must bear in mind their primary aim of achieving *restitutio in integrum* (see *Ilgar Mammadov v. Azerbaijan (infringement proceedings)* [GC], no. 15172/13, § 150, 29 May 2019).

306. The Court reiterates that the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith (see *Ilgar Mammadov* (*infringement proceedings*), cited above, § 214). This requirement is at the heart of the Convention system, including the procedure for supervision of the execution of judgments, which implies

that they should be executed in good faith and take place in a manner that is fully compatible with the "conclusions and spirit" of the judgment (see *Kavala (infringement proceedings),* § 169). In this connection, the Court observes that Article 46 of the Convention has a constitutional value in Türkiye, in accordance with Article 90 § 5 of the Constitution (see paragraph 80 above), according to which international agreements duly put into effect in the area of fundamental rights and freedoms, such as the Convention, have the force of law and no appeal lies to the Constitutional Court to challenge their constitutionality; in the event of a conflict with the provisions of domestic law on the same subject, it is the international agreement which prevails (see *Yüksel Yalçınkaya* [GC], cited above, § 418). It follows that the obligation to execute the Court's judgments is not solely a matter of international law, but is also binding as a requirement of the rule of law, enshrined in Article 2 of the Constitution (see paragraph 79 above).

307. With regard to individual measures, the Court observes that the violations found in the present case imply an obligation for the respondent State to take appropriate individual measures to put an end to them. It reiterates in this connection that where the very nature of the violation leaves no choice as to the measures to be taken, its task is to indicate those which appear the most appropriate in view of the circumstances of the case.

308. In the present case, the Court has concluded, in particular, that the applicant's deprivation of liberty following his conviction on 25 April 2022, which has become final, was based on a flagrant denial of justice (see paragraph 245 above). It also notes that this detention was imposed in the context of proceedings that were tainted by multiple interrelated violations of the rights enshrined in the Convention, thus impairing the very essence of the guarantees afforded by Article 6. In those conditions, the applicant's continued incarceration after the adoption of the present judgment would amount to a continuation of the violations already found in this case, especially of Article 5 § 1 of the Convention. Having regard to the particular circumstances of the case, the seriousness of the violations found of Articles 5 § 1, 6 § 1, 10 and 11 of the Convention, and of Article 18 taken in conjunction with those provisions, and the urgent necessity of putting an end to them, the Court considers that the respondent State must secure the applicant's release at the earliest possible date (see, *mutatis mutandis, Assanidze v. Georgia* [GC], no. 71503/01, §§ 202-03, ECHR 2004-II, and *Del Río Prada*, cited above, § 139).

309. Moreover, the Court reiterates, as noted above (see paragraph 305), that the respondent State is under an obligation to put the applicant, as far as possible, in a situation equivalent to the one in which he would have found himself had there not been a breach of the Convention, which implies the elimination of the consequences of the measures taken against him. On this point, it emphasises that the applicant's criminal conviction (see paragraphs 47-57, 63 and 65-68 above) should be regarded, under Convention law, as

null and void. It also notes that domestic law provides, where a final Court judgment finds a violation of the Convention, a mechanism for the reopening of proceedings capable of erasing the effects of the impugned conviction. In those conditions, it is incumbent on the respondent State to put in place, as soon as possible, all appropriate measures in order to eliminate the consequences of that conviction and to remedy, in an effective manner, the violations found.

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

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

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

313. The Court considers that structural measures of this sort are necessary to restore the full effectiveness of the separation of powers, to maintain public confidence in the judiciary and to ensure that the right to a fair trial and the right to individual liberty are not undermined by considerations that have nothing to do with the requirements of the rule of law. In this connection, the findings of the Commissioner for Human Rights in his 2024 memorandum (see paragraphs 99-101 above), and the recommendations contained in it, are of particular relevance in the present case.

314. The Court refers to its conclusions as set out above (see paragraphs 130-132) and emphasises that full compliance with the Constitutional Court's judgments is essential to the rule of law. In this connection, it reiterates that, as the Constitutional Court has also noted (see paragraph 88 above), the failure to execute that court's judgments is likely to undermine the effectiveness of the individual application procedure, while compromising the constitutional order by depriving applicants of the effective application of their recognised rights. Furthermore, as indicated in paragraph 126 above, Article 46 of the Convention places a legally binding obligation on the States Parties to abide by the final judgments of the Court, which implies their full, effective and prompt execution. In this context, it seems difficult to reconcile this requirement with the failure to grant priority at the domestic level to infringement proceedings in respect of the execution of a judgment by this Court, given that such a situation is likely to prolong and exacerbate the breach of fundamental rights already found.

315. The Court further observes, in the light of its finding under Article 3 of the Convention (see paragraph 289 above), that the present case discloses the existence of another problem, concerning the execution of irreducible life sentences, in the absence of a mechanism guaranteeing a genuine prospect of conditional release. This question, which would appear to be systemic in nature, remains under the supervision of the Committee of Ministers. It is accordingly for the respondent State to remedy this situation by instituting, through the adoption of appropriate legislative measures, a procedure in accordance with the principles established by the Grand Chamber in the above-cited *Vinter and Others* judgment.

FOR THESE REASONS, THE COURT

1. *Dismisses*, by a majority, the Government's preliminary objection alleging non-exhaustion of the remedy of an individual application to the Constitutional Court;

2. *Declares*, by a majority, the complaints concerning Articles 3 (absence of a mechanism to review the sentence of aggravated life imprisonment), 5 § 1, 6 §§ 1 and 3 (d) (independence and impartiality of the court, fairness of the proceedings, restrictions on the rights of the defence), 10, 11 and 18, and concerning Article 18 taken in conjunction with Articles 5 § 1, 6, 10 and 11 of the Convention, admissible;

3. *Declares*, by a majority, the complaint concerning the length of the proceedings (Article 6 § 1) inadmissible;

4. *Holds*, by 15 votes to 2, that there has been a violation of Articles 10 and 11 of the Convention;

5. *Holds*, by 15 votes to 2, that there has been a violation of Article 6 § 1 of the Convention in respect of the complaints concerning the independence and impartiality of the court, the fairness of the proceedings, and the restrictions on the rights of the defence;

6. *Holds*, by 15 votes to 2, that there has been a violation of Article 5 § 1 of the Convention;

7. *Holds*, by 15 votes to 2, that there has been a violation of Article 18 of the Convention, taken in conjunction with Articles 5 § 1, 6 § 1, 10 and 11 of the Convention;

8. *Holds*, by 15 votes to 2, that there has been a violation of Article 3 of the Convention in respect of the complaint concerning the absence of a mechanism to review the sentence of aggravated life imprisonment;

9. *Holds*, unanimously, that there is no need to examine the admissibility and merits of the complaints under Articles 3 (the applicant's continued detention), 5 § 4 and 6 § 2, or under Article 7, taken separately or in conjunction with Article 18 of the Convention;

10. *Holds*, by 15 votes to 2,
    (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
        (i) EUR 70,000 (seventy thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
        (ii) EUR 43,342.57 (forty-three thousand, three hundred and forty-two euros, fifty-seven cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
    (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

11. *Holds*, by 15 votes to 2, that the respondent State must secure the applicant's release at the earliest possible date (paragraph 308 above) and eliminate the consequences of his conviction (paragraph 309 above), and that it is incumbent on it to take all the appropriate general measures, as recommended in paragraphs 310-315 above, in order not only to eliminate the consequences of the violations sustained by the applicant, but also to prevent similar future violations.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 August 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Deputy Registrar	Mattias Guyomar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Dissenting opinion of Judges Vehabović and Yüksel;
(b) Dissenting opinion of Judge Yüksel.

JOINT DISSENTING OPINION OF JUDGES VEHABOVIĆ AND YÜKSEL

1. We respectfully disagree with the findings of the majority, as we consider that the present application should have been rejected as inadmissible for failure to exhaust domestic remedies. Although the majority's approach does not call into question the general effectiveness of the mechanism of an individual application to the Turkish Constitutional Court (see paragraph 128 of the judgment), their focus on the duration of the proceedings before that court represents an unjustified departure from the well-established requirement of exhaustion.

2. The machinery of protection established by the Convention operates on the foundational principle of subsidiarity, which dictates that the primary responsibility for safeguarding human rights lies with the national legal systems. Within this architecture, the exhaustion rule serves as an indispensable prerequisite (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014). States are dispensed from answering before an international body for their administrative or judicial acts before they have had an adequate opportunity to resolve the grievances and put matters right through their own legal order. This dual rationale serves not only the interests of the respondent States but also protects the structural integrity of the Court and the broader Convention system. It is appropriate that national courts should initially have the opportunity to determine questions of compatibility, providing the European Court with the benefit of the views of the domestic judiciary, which remains in direct and continuous contact with the vital forces of its own country (see *Burden v. the United Kingdom* ([GC], no. 13378/05, § 42, ECHR 2008). By failing to exhaust domestic remedies, applicants fail to enable national courts to fulfil their primary protective role, thereby undermining the subsidiary function of the international tribunal.

The structural effectiveness of an individual application to the Turkish Constitutional Court

3. The origin of the individual application mechanism in Türkiye lies in the constitutional amendment adopted by public referendum on 12 September 2010, which was introduced following explicit recommendations from international bodies, including the Venice Commission and the Committee of Ministers of the Council of Europe, alongside domestic constitutional experts and academics. This structural reform was specifically designed to enhance the domestic protection of fundamental rights and freedoms, improve national compliance with the Convention, and reduce the number of applications lodged against Türkiye by resolving human rights grievances within the domestic legal order. Since the Constitutional Court began receiving

applications on 23 September 2012, it has established itself as the cornerstone of human rights protection within the national legal system of Türkiye.

4. By maintaining a direct and robust judicial dialogue with the European Court of Human Rights, transposing Convention standards and closely following international case-law, the Constitutional Court has successfully integrated Strasbourg jurisprudence into its domestic practice. Over the 14 years since its establishment, this domestic remedy has led to the examination of hundreds of thousands of cases and the emergence of case-law that aligns with the Court's standards, thereby significantly enhancing the domestic protection of Convention rights. In cases subsequently brought to Strasbourg, the detailed reasoning employed by the Constitutional Court forms an invaluable and necessary part of the international judicial assessment.

5. Consequently, the requirement to exhaust the individual application mechanism before the Constitutional Court has become a central pillar of the admissibility assessment in cases originating from Türkiye. In *Uzun v. Turkey* ((dec.), no. 10755/13, 30 April 2013), a thorough examination of this legal remedy led to the landmark conclusion that the individual application mechanism offered a realistic prospect of appropriate redress for Convention grievances. This requirement has been applied consistently in admissibility assessments across subsequent years. The domestic remedy in question remains structurally sound and must be fully exhausted before the European Court can assume jurisdiction. As a result, we are unable to join the majority's general conclusion on the admissibility of the present application, namely that the applicant cannot be criticised for not having waited for the outcome of his application to the Constitutional Court.

DISSENTING OPINION OF JUDGE YÜKSEL

1. In the present judgment, the Grand Chamber decided on the merits of the case before the Constitutional Court had rendered its judgment on the applicant's individual application, in which he had alleged violations of his fundamental rights almost identical to those raised in his application to this Court. Although my joint dissenting opinion with Judge Vehabović sets out my general position on the requirement to exhaust the individual application mechanism before the Constitutional Court, I would like to further explain my disagreement as to why the approach taken by the majority is not warranted in the circumstances of the present case.

2. It should be emphasised at the outset that the Court has already examined the mechanism of an individual application to the Constitutional Court and found no elements enabling it to conclude that the remedy in question did not, in principle, offer prospects of appropriate redress for complaints under the Convention (see *Uzun v. Turkey* (dec.), no. 10755/13, § 69, 30 April 2013). In the years since the *Uzun* decision, the requirement to exhaust the individual application mechanism before the Constitutional Court has been applied consistently by the Court in its admissibility assessment (see, among many other authorities, *Mercan v. Turkey* (dec.), no. 26511/16, 8 November 2016; *Zihni v. Turkey* (dec.), no. 59061/16, 29 November 2016; and most recently, *Aydın and Sarı v. Türkiye* (dec.), nos. 6571/17 and 34234/19, 9 June 2026).

3. In dismissing the Government's objection of non-exhaustion, while the majority strictly limit the conclusion to the particular circumstances of the case and do not call into question the general effectiveness of the individual application mechanism before the Constitutional Court (see paragraph 128 of the judgment), they rely on the duration of the proceedings before the Constitutional Court, as well as on the specific circumstances of the present case.

4. As regards the duration of proceedings before the Constitutional Court, it should be noted at the outset that there are currently two individual applications by the applicant pending before that court. The first, lodged on 9 June 2022, challenges the applicant's pre-trial detention. The second, lodged on 24 October 2023, concerns the deprivation of liberty arising from his final conviction. As this latter application, which has been pending for approximately two years and nine months, is the one essentially corresponding to the main complaints and the merits of the present case, it appears to be principally relevant for the purposes of the duration analysis.

5. I would like to emphasise that the Court has consistently held that the duration taken to examine an application is not sufficient in itself to draw a conclusion as to the effectiveness of the proceedings, provided that such duration is not manifestly excessive (see *Kavala v. Turkey*, no. 28749/18, § 99, 10 December 2019; *Wikimedia Foundation Inc. v. Turkey* (dec.),

no. 25479/19, §§ 46-47, 1 March 2022; and *Selahattin Demirtaş v. Türkiye (no. 4)*, no. 13609/20, § 159, 8 July 2025).

6. So far, the only instance in which the Court has found that an applicant was not required to await the outcome of his application to the Constitutional Court was in *Selahattin Demirtaş (no. 4)* (cited above), which concerned a complaint under Article 5 § 4 of the Convention relating to the requirement of speediness in the judicial review of the lawfulness of detention. In that case, the individual application had been pending before the Constitutional Court for approximately five years and the period taken into account for the examination under Article 5 § 4 amounted to just over four years (ibid., § 150). The circumstances of the present case are different not only in terms of the complaints raised but also in terms of the relevant time periods, since they are comparable to those previously found acceptable by the Court. For example, in *Wikimedia Foundation Inc.* (cited above), the Court observed that a period of two years and eight months for the Constitutional Court to deliver its judgment, while "long", did not appear "manifestly excessive". Having regard to the Court`s relevant case-law and practice, I do not believe that the duration of the proceedings before the Constitutional Court in the applicant's case can be regarded as manifestly excessive and sufficient to justify not awaiting the outcome of his individual application.

7. As regards the specific circumstances of the present case, the majority appear to have taken the view that the issue relating to the implementation of previous judgments required particular promptness on the part of the Constitutional Court in dealing with the applicant's case. However, in my view this issue, in itself, cannot be regarded as sufficient to justify a departure from the requirement to exhaust the individual application mechanism. Taking into consideration the relevant time periods over which the applications have remained pending – which, as noted above, are not excessive – and the change in the legal basis of the applicant's deprivation of liberty, the preferable course would have been to wait for the Constitutional Court to give its judgment on his complaints.

8. Aside from this general disagreement with the majority's approach to the issue of non-exhaustion in the present case, I also have further reservations concerning the admissibility of several distinct complaints raised by the applicant under Articles 3 and 5 of the Convention.

9. As regards the applicant's complaint concerning the irreducible life sentence under Article 3, it is evident from the case file that he did not bring forward any arguments relating to this issue before the domestic courts. In this respect, not only was the outcome of his individual application to the Constitutional Court not awaited, but no such complaint was raised in his individual application in the first place.

10. A separate issue arises in respect of part of the applicant`s pre-trial detention examined under Article 5 § 1 (c) of the Convention. In so far as the complaints concern the applicant's detention in connection with the

espionage charge under Article 328 of the Criminal Code, the Constitutional Court delivered its decision on that matter in December 2020 (see paragraph 37 of the judgment) and concluded that there had been no violation of the applicant's right to liberty. The applicant subsequently did not bring a complaint before this Court within the applicable time-limit following that Constitutional Court judgment, nor did he provide any explanation for not having done so. As a result, I consider that this part of the complaint under Article 5 § 1 (c) is also inadmissible for non-compliance with the time-limit requirement under Article 35 § 1 of the Convention.

11. Lastly, I would like to highlight my disagreement with the majority's approach under Articles 18 and 46 of the Convention, as it also flows from my position on the inadmissibility of the present application. Referring also to my dissenting opinion in the Court's 2019 judgment (cited above) concerning the same applicant, I would like to emphasise that the finding of an ulterior purpose on the part of the domestic authorities, including the domestic judiciary, is difficult to reconcile with the fact that the applicant's individual application remains pending before the Constitutional Court. The very premise of the exhaustion requirement is that the domestic judiciary should be given the opportunity to complete its examination before this Court draws conclusions about its motives.