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Association Européenne pour la Défense des Droits et des Libertés

Rule 9.2 Communication concerning the execution of the judgment

Yüksel Yalçınkaya v. Türkiye (Application no. 15669/20), Grand Chamber, 26 September 2023

Submission to the Secretariat of the Committee of Ministers of the Council of Europe
Department for the Execution of Judgments of the European Court of Human Rights
Strasbourg, October 2026

Executive summary

Yüksel Yalçınkaya, a Turkish schoolteacher, was convicted in 2019 of membership of an armed terrorist organisation on the basis of his alleged use of an encrypted messaging application called ByLock, together with his lawful membership of a trade union and an association and his holding of an account at a bank later closed by the authorities. On 26 September 2023 the Grand Chamber of the European Court of Human Rights (ECtHR) held that the conviction, without seeking constituent material and moral elements of the terrorism offences, violated Articles 6 § 1, 7 and 11 of the Convention, and it identified the Turkish judiciary's automatic treatment of ByLock use as conclusive proof of terrorist membership as a systemic problem affecting, at the time, more than 8,000 similar applications pending before the Court. Turkey was required to take general measures "so that the Court does not have to reiterate its finding of a violation in a series of comparable cases" in order "to address [identified defects] on a larger scale – that is, beyond the specific case" (GC judgement, §§417-418). Then, in comparable cases such as Demirhan, Yasak, Karsli, Kiliçarslan, etc., the Court has outlined similar shortcomings in the domestic courts' reasoning, referring to general measures required in Yalçınkaya judgement. Most of these cases were subsequently included as repetitive cases in the Yalçınkaya group by the Committee of Ministers.

Almost three years later, no domestic court, including the Constitutional Court, has given effect to the judgment, and Mr Yalçınkaya himself has been retried and reconvicted twice on the same evidentiary basis, similarly to most of the applicants in comparable cases. This submission sets out that the judgment remains substantially unexecuted and calls on the Committee to take appropriate action.

I. Purpose of this communication and its relationship to the existing file

1. ASSEDEL, the Association Européenne pour la Défense des Droits et des Libertés, submits this communication under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. ASSEDEL is a European human rights association active in the monitoring of proceedings before the European Court of Human Rights and the execution of its judgments, including through third-party interventions before the Court and Rule 9.2 communications to the Committee of Ministers, with a particular focus on cases arising from Türkiye.

2. The Committee already has before it a number of Rule 9.2 communications concerning this case, which forms part of a group of eight cases with Türkiye as respondent State. This submission does not reiterate arguments and findings in that record, but rather builds upon them, bringing to the Committee's attention the developments of the past year, in particular: the Grand Chamber judgment in *Yasak v. Türkiye* of 5 May 2026, a case scheduled for a first examination at the Committee of Ministers' 1577th meeting alongside the case forming the subject of the present submission; the Committee judgment in *Kılıçarslan and Others v. Türkiye* of 23 June 2026; many Rule 9.1 communications concerning the execution of the

judgment *Karslı and others*;[1] and the belated submission, on 12 October 2026, of the Government's Updated Action Plan (DH-DD(2026)1298),[2] which, as demonstrated below, relies on statistical illusions and highly selective jurisprudence rather than addressing the root causes of the systemic violations.

II. The Grand Chamber judgment and the measures required

3. The Grand Chamber found that the Turkish judiciary's uniform and global approach to ByLock evidence, treating its mere use as conclusive and sufficient proof of membership of an armed organisation without any individualised assessment of the constituent elements of the offence, was incompatible with Article 7, and that the domestic courts' failure to allow an effective challenge to that evidence, and their silence on matters going to the heart of the case, was incompatible with Article 6 § 1. It further found that Mr Yalçınkaya's lawful membership of a trade union and an association had been used against him in a manner incompatible with Article 11.[3]

4. The Court expressly framed its findings as reflecting a systemic problem and required Türkiye to take general measures addressing the domestic judiciary's approach to ByLock evidence and previsible application of antiterrorism offences, noting that this was necessary beyond the individual case given the thousands of follow-up applications already on its docket.[4] In these cases, the Court referred *to general measures required in Yalçınkaya judgement* (*DEMİRHAN and others,* n° 1595/20, §53; *YASAK,* n° 17389/20, §254; *KILIÇARSAN and others*, n° 16234/18, §15; etc). As to Mr Yalçınkaya's own situation, the Court considered that the reopening of the domestic proceedings, available under Article 311 § 1(f) of the Code of Criminal Procedure, would in principle constitute the most appropriate form of individual redress.[5]

III. The Government's October 2026 Action Plan: An Alternative View

5. In the latest decision concerning the case, adopted at its 1531st meeting in June 2025, the Committee of Ministers called for Mr Yalçınkaya's reopened proceedings to be completed in accordance with Convention standards and welcomed initial examples of domestic judicial compliance, while requesting further decisions and specific preventive measures by the end of June 2026.[6] However, demonstrating a persistent procedural pattern of delayed filings—having already submitted its initial Action Plan five months past the applicable deadline—the Government once again missed the Committee's reporting expectation by submitting its latest Action Plan on 12 October 2026, four months after the June 2026 deadline.[7] To date, the prevailing trend among domestic courts suggests a

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[1] Rule 9.1 Communications available on the execution page of *Karslı and other v. Türkiye, no. 18693/20.*

[2] Action Plan (DH-DD(2026)1298), Communication from Türkiye concerning the group of cases *Yuksel Yalcinkaya v. Türkiye* on 12 October 2026.

[33] ECtHR, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023: violation of Article 7 by 11 votes to 6, violation of Article 6 § 1 by 16 votes to 1, and violation of Article 11.

[44] Council of Europe, Committee of Ministers, Rule 9.2 Communication from an NGO (Weltanwälte e.V.) in the case of Yüksel Yalçınkaya v. Türkiye, DH-DD(2024)1086, 27 September 2024, p. 2

[5] ECtHR, *Yüksel Yalçınkaya v. Türkiye* [GC], App. no. 15669/20, Judgment of 26 September 2023, para. 418.

[6] Council of Europe, Committee of Ministers, 1531st meeting (DH) (June 2025), *Decisions adopted: Yüksel Yalçınkaya v. Türkiye*, CM/Notes/1531/H46-41.

[7] Government of Türkiye, *Action Plan (or Updated Action Plan) in the case of Yüksel Yalçınkaya v. Türkiye*, Document DH-DD(2026), 12 October 2026.

systemic difficulty in comprehensively applying the binding principles set out in *Yalçınkaya*. Even the Constitutional Court appears to have adopted a restrictive approach, often making limited references to the Grand Chamber's findings rather than fully integrating their core legal implications.

6. Public statements by high-level Turkish officials have compounded the problem: while the Minister of Justice had expressly qualified the judgement as "inadmissible" since the Court would be "without jurisdiction" and "partial",[8] the President of the Constitutional Court himself was stating, "ultimately, the courts in Türkiye will make the decision",[9] a formulation that a state governed by the rule of law would not ordinarily need to make in response to a binding judgment of the Court whose jurisdiction it has accepted, and one which risks being read by the domestic judiciary as license to disregard the Grand Chamber's findings.

7. The Government's Updated Action Plan of October 2026 (DH-DD(2026)1298, §§12-21) attempts to portray compliance by boasting that domestic courts granted reopening requests for 1,499 applicants across the joined cases. Yet, a closer reading of the Government's own appended tables reveals a glaring statistical illusion: out of those 1,499 reopened proceedings, only 24 have resulted in a final acquittal. A 1.6% acquittal rate among the reopened cases—and an even more marginal fraction of the total 2,512 applicants referenced—demonstrates that "reopening" under Article 311 § 1(f) has devolved into an exercise in procedural formalism. While this does not conclusively establish that the proceedings which did not lead to an acquittal were again affected by deficiencies, it nevertheless provides a strong indication that the domestic courts' approach may have remained largely unchanged. Also, it is noted, without giving the reasoning of the domestic courts, that a total of 64 reopening demands have been simply dismissed.[10] Even when reopening is granted, reviews of recent proceedings indicate that domestic courts often reiterate the initial convictions by relying on the identical evidentiary basis, rather than conducting the fresh, Convention-compliant assessment required by the Grand Chamber.[11] Consequently, the overwhelming majority of applicants continue to endure ongoing imprisonment or the severe administrative sanctions characteristic of "civil death" (including absolute bans on public service employment and passport revocations) without any suspension of the execution of their sentences during the retrial phase.[12]

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[8] Yılmaz Tunç (Minister of Justice), "Adalet Bakanı Tunç'tan AİHM'in Türkiye aleyhindeki "Yalçınkaya" kararına tepki", *Anadolu Ajansı* (Anadolu Agency), 26 September 2023. Available at: https://www.aa.com.tr/tr/gundem/adalet-bakani-tunctan-aihmin-turkiye-aleyhindeki-yalcinkaya-kararina-tepki/3001568

[9] "New report reveals the tactics Turkey uses to defy ECHR rulings", *The Arrested Lawyers Initiative*, 19 June 2025. Available at: https://arrestedlawyers.org/2025/06/19/new-report-reveals-tactics-turkey-uses-to-defy-echr-rulings/ (Accessed: 29 October 2026).

[10] This figure is cited in the Government's Updated Action Plan (DH-DD(2026)1298). For a concrete example of such a dismissal raised before the Committee, see the applicant's Rule 9.1 Communication in *Fatih Eken v. Türkiye* (Application no. 44492/21)

[11] See, for instance, the recent retrial decision by the Kayseri 2nd Assize Court concerning Mr. Yüksel Yalçınkaya himself (Decision of 12 September 2024), where the court delivered a new conviction that disregarded the Grand Chamber's criteria and upheld the initial evidentiary assessment.

[12] The continuation of these administrative sanctions is statistically self-evident from the Government's own submitted data: with only 24 acquittals out of 1,499 reopened cases, over 98% of the applicants in these proceedings remain subject to their initial sentences and associated civil restrictions. For a comprehensive legal and empirical assessment of the ongoing administrative "civil death" of the applicants, see Italian Federation for Human Rights (FIDU), *'CIVIL DEATH IN PRACTICE: A legal and empirical assessment of Turkey's post-2016 purges'*, June 2026.

8. It is also worth noting that some domestic courts impose travel bans or periodic reporting obligations even though the applicants in question have already served the integrality of their sentences. These measures—often extending well beyond the execution phase of a prison sentence—are perceived by applicants as dissuasive and ill-intentioned practices designed to restrict fundamental rights post-release.[13] While these concerns have been raised directly in Rule 9.1 communications to the Committee of Ministers,[14] this trend is further evidenced by broader domestic judicial practice and civil society reporting.

9. Furthermore, the Government attempts to evidence a shift in judicial practice by annexing twenty "sample judgments". This highly selective presentation of evidence severely misrepresents the reality of the domestic docket. These annexed acquittals overwhelmingly concern factual outliers—cases where technical data was entirely absent, erroneous, or inextricably flawed, such as instances involving the "Mor Beyin" anomaly (a technical incident where users' internet traffic was unknowingly redirected to the ByLock server by third-party applications without the users ever downloading the app). Consequently, these samples fail to address the core holding of Yalçınkaya: that the automatic equation of actual ByLock use with armed terrorist membership, devoid of individualized intent, violates Article 7. In stark contrast to the Government's 20 examples, the 3rd Criminal Chamber of the Court of Cassation, along with numerous lower courts, continues to systematically uphold convictions on the premise that ByLock use is inherently sufficient for a conviction.[15]

IV. Individual measures: the reopening of Mr Yalçınkaya's own case as a test of the system

10. The most direct evidence available to the Committee on whether the Grand Chamber's judgment has been given effect is the outcome of Mr Yalçınkaya's own retrial. The Kayseri 2nd Assize Court reopened the proceedings and, on 15 September 2024, reconvicted him on the same charge. Rather than correcting course, the domestic court reconvicted him by expressly relying on the reasoning of the Second Chamber's judgment in *Yasak v. Türkiye*—which at that point had not yet become final and was pending before the Grand Chamber—instead of applying the binding and final findings of the Grand Chamber in the applicant's own case.[16] Furthermore, Mr Yalçınkaya's individual appeal against this recent conviction remains pending before the Court of Cassation. Consequently, the applicant continues to endure an excessively lengthy judicial process, having been denied prompt and effective redress years after the initial violations occurred.

11. The irony of that choice has since become apparent. The Grand Chamber delivered its final judgment in *Yasak* on 5 May 2026, and rather than assisting the Government's position, it reinforced the personal-culpability standard at the heart of *Yalçınkaya*, explicitly warning against convictions resting on "guilt by association" rather than on individualised evidence of the constituent elements of the offence.[17] The domestic court's reliance on a provisional and more permissive reading of a judgment that was not yet final has therefore been overtaken

[13] See, for example, Altan v. Turkey (No. 13237/17), where judicial control measures remained active even after sentence fulfillment.
[14] See Rule 9.1 Communication from the Applicant in *Koza v. Turkey* (App. No. 4456/23).
[15] See, e.g., Kayseri 2nd Assize Court, Decision of 12 Sept. 2024 (*Yalçınkaya* retrial); and App. no. 44492/21 (*Fatih Eken*).
[16] DH-DD(2025)12, cited above, section on the Kayseri Court's second conviction decision.
[17] ECtHR, *Yasak v. Türkiye* [GC], no. 17389/20, 5 May 2026, in particular § 202 and §§ 200–213.

by the Grand Chamber's own subsequent ruling in that very case, which points in the opposite direction from the one the Kayseri court adopted.

12. The retrial also exposed how the Government's approach has rendered the individualised assessment required by the Grand Chamber practically impossible. When the trial court sought the raw ByLock data underlying the Bylock Evaluation and Determination Report used against the applicant, in order to enable an independent expert assessment of its reliability, the Ankara Chief Public Prosecutor's Office responded that such raw data could not, and would not, be produced in any case file, and that no court would in practice be able to commission an expert report on the reliability of the data.[18] This response confirms, in the clearest possible terms and directly from a State authority, that the structural obstacle to an effective challenge identified by the Grand Chamber under Article 6 § 1 has not been removed. It cannot be removed by retrial alone if the evidentiary basis itself remains permanently shielded from independent scrutiny.

13. This structural obstacle has now been expressly conceded by the Government. In its October 2026 Action Plan (§ 38), the Government openly admits that raw ByLock data is not disclosed to the defense because "it was not possible to sort the raw data on a user ID basis without first processing them" and confirms that the images of the raw data are "secured in lockboxes" by the intelligence services. The provision of a mere police-generated summary—the Evaluation and Determination Report—without granting the defense access to the underlying raw data for independent expert verification, renders the equality of arms illusory. A trial where the decisive electronic evidence is permanently shielded from defense scrutiny continues to constitute a textbook violation of Article 6 § 1.

V. General measures: a widening family of judgments confirms the systemic character of the problem

14. Since the Grand Chamber's judgment, the Court has had to reaffirm its findings repeatedly, in terms that leave no room for the Government's continuing suggestion that the problem was confined to the facts of a single case. On 22 July 2025, in *Demirhan and Others v. Türkiye*, a Chamber examined 239 applications jointly and found, for the first time in the Court's history in a single case, 239 violations of Article 7, together with violations of Article 6 § 1, applying the *Yalçınkaya* reasoning without modification.[19] On 16 December 2025, three further Committee judgments, *Bozyokuş and Others*, *Karslı and Others* and *Seyhan and Others*, found the same violations in respect of a further 2,420 applicants.[20]

15. Before the Court in *Seyhan and Others*, the Government repeated the same argument it had already made, and had already seen rejected, in *Demirhan*: that the Court's findings were confined to the specific facts before it and should not be extrapolated to other applicants.[21] The repetition of an argument already rejected by the Court is itself a further indication that the Government has not internalised the systemic character of the finding it is required to address. On 23 June 2026, in *Kılıçarslan and Others v. Türkiye*, a Committee again found no reason to depart from *Yalçınkaya*, citing both that judgment and the Grand

[18] Ibid.
[19] ECtHR, *Demirhan and Others v. Türkiye*, nos. 1595/20 and 238 others, 22 July 2025, §§ 42–45 and Article 41.
[20] ECtHR, *Bozyokuş and Others v. Türkiye* (132 applicants), *Karslı and Others v. Türkiye* (1,436 applicants) and *Seyhan and Others v. Türkiye* (852 applicants), Committee judgments of 16 December 2025.
[21] ECtHR, *Seyhan and Others v. Türkiye*, cited above, § 7.

Chamber's *Yasak* ruling of a month earlier.[22] A further batch judgment, *Dönmez and Others*, confirmed the same violations and the availability of reopening as the appropriate remedy.[23]

16. The scale involved is not marginal. According to statements before the Parliamentary Assembly of the Council of Europe, violations of Articles 6 and 7 arising from this same practice have already exceeded 3,500, out of more than 8,000 similar applications pending before the Court and a potential caseload exceeding 100,000 if the underlying prosecutions are taken into account.[24] Each of these judgments, without exception, has found that the Turkish judiciary continues to treat the mere use of ByLock as conclusive and sufficient proof of membership of an armed organisation, which is precisely the practice the Grand Chamber found unlawful in September 2023.

17. Lastly, in relation to general measures, the Government notes that human rights training and educational initiatives have been provided to members of the judiciary. While such capacity-building efforts are a positive development, their substantive impact on established judicial practice will inevitably take time to materialise. In the interim, as demonstrated by the ongoing dismissals of reopening requests and the continuation of convictions on the very grounds criticised by the Grand Chamber, the current judicial approach remains unchanged. Consequently, these long-term educational initiatives cannot substitute for the concrete and timely legal measures urgently required to secure immediate compliance. The binding principles set out in the *Yalçınkaya* judgment must be fully and effectively executed without further delay.

VI. The Practical Ineffectiveness of Domestic Reopening as a Remedy

18. In every follow-up judgment since *Yalçınkaya*, the Court has declined to award compensation for non-pecuniary damage, holding that a finding of violation is sufficient just satisfaction precisely because the reopening of domestic proceedings is available and would, in principle, constitute the most appropriate form of redress. That approach rests on an empirical assumption: that reopening, where sought, will in substance remedy the violation. However, where this assumption has been put to the test—most notably in Mr Yalçınkaya's own retrial—the result has been a reconviction on the exact same evidentiary basis, reflecting a broader domestic pattern of resistance. If reopening under Article 311 § 1(f) of the Code of Criminal Procedure does not in practice deliver an individualised assessment compliant with Articles 6 § 1 and 7, the premise on which thousands of other applicants are being left without compensation is called into question. Consequently, the adequacy of the individual measures taken in this group of cases remains a matter squarely within the Committee's supervisory responsibility.

VII. A procedural concern: ensuring continued and effective supervision

19. ASSEDEL respectfully submits that the Government's persistent pattern of procedural non-responsiveness and delayed, formulaic submissions risks undermining the integrity of the Committee's supervisory framework. Rather than engaging in a genuine and timely dialogue, the Turkish authorities have repeatedly defaulted on reporting deadlines set by the Committee—most recently missing the June 2026 expectation and only providing an update

[22] ECtHR, *Kılıçarslan and Others v. Türkiye*, Committee judgment adopted 23 June 2026.
[23] ECtHR, *Dönmez and Others v. Türkiye*, 2026, referring to *Yüksel Yalçınkaya*, cited above, §§ 411, 412 and 425.
[24] Statements of the PACE Committee on Legal Affairs and Human Rights, as reported 24 June 2026.

in October 2026 (DH-DD(2026)1298)[25] that fundamentally evades the structural issues. This obstructionist posture is further compounded by a refusal to provide concrete answers regarding the practical impossibility of verifying ByLock evidence, as confirmed in writing by domestic prosecutorial authorities.

20. A case presenting these features—an expanding body of confirming ECtHR judgments, a State authority's explicit admission that raw underlying evidence remains shielded in intelligence lockboxes, and a Government strategy relying on statistical illusions to claim compliance—demands unyielding scrutiny. ASSEDEL therefore urges the Committee to ensure that Türkiye's continued responsiveness-in-form, accompanied by total non-compliance in substance, is met with sustained, enhanced supervision and that this group of cases remains permanently prioritized on the Committee's Human Rights agendas.

VIII. The wider institutional record

21. ASSEDEL notes, without repeating it at length, that the concerns raised in this submission are not confined to civil society. The European Parliament, in its resolution of 17 June 2026 on the 2025 Commission report on Türkiye, urged Türkiye to fully implement all ECtHR judgments, expressly naming *Yalçınkaya* and related cases, and drew attention to the practical consequences for affected applicants of the Court's own move away from awarding compensation in follow-up cases.[26] The Parliamentary Assembly's Committee on Legal Affairs and Human Rights has likewise called for consequences in the event of continued non-compliance. ASSEDEL respectfully submits that this convergence of institutional concern reinforces, rather than substitutes for, the need for concrete and monitored action by the Committee itself.

IX. Requests to the Committee of Ministers

ASSEDEL respectfully requests that the Committee of Ministers;

– welcome the inclusion of the Yüksel Yalçınkaya group of cases on the agenda of its 1577th meeting (December 2026) (DH), and decide to maintain this group under active and continued enhanced supervision, ensuring its systematic inclusion on the agenda of all upcoming Human Rights meetings until concrete compliance is demonstrated;

– take note of the Updated Action Plan submitted by the Government on 12 October 2026 (DH-DD(2026)1298), but express serious concern that the data contained therein—specifically showing that out of 1,499 reopened proceedings, only 24 resulted in acquittals, and 64 demands were dismissed —demonstrates that the reopening of criminal proceedings under Article 311 § 1(f) of the Code of Criminal Procedure has failed in practice to provide an effective remedy in substance;

– request the Government to address its own admission (§ 38 of the Updated Action Plan) that raw ByLock data remains permanently "secured in lockboxes" and shielded from independent expert scrutiny, and insist that the Government clarify how defense rights under

[25]On the Government's repeated procedural delays, including the missed June 2026 deadline and the substantive inadequacies of the belated October 2026 submission, see Communication DH-DD(2026)1298.
[26]European Parliament resolution of 17 June 2026 on the 2025 Commission report on Türkiye, P10_TA(2026)0215 (rapporteur Nacho Sánchez Amor, A10-0106/2026), para. 10.

Article 6 § 1 can be effectively exercised when the underlying digital evidence cannot be independently verified;

– call upon the Government to identify concrete general measures, supported by a clear and defined timetable, ensuring that all domestic courts—including the Court of Cassation and the Constitutional Court—cease applying strict liability based on mere ByLock usage and instead apply a genuine personal-culpability standard consistent with Yalçınkaya, Demirhan and Yasak;

– urge the Turkish authorities to issue binding legislative or judicial guarantees ensuring that requests for the reopening of proceedings under Article 311 § 1(f) are accompanied by an immediate stay of execution of sentences, thereby bringing an end to ongoing unjustified imprisonment and civil deprivations; and

– encourage senior public officials and judicial figures to refrain from statements that question the binding nature of the Court's judgments and invite the Government to report on concrete steps taken to ensure that the Constitutional Court engages substantively with follow-up applications rather than issuing formulaic rejections.

Closing remarks

22. ASSEDEL remains at the Committee's disposal for any further information, including translations of the domestic decisions referred to in the communications already on file, and thanks the Secretariat for its attention to this submission.

Teoman AYDOGAN, Secretary General

ASSEDEL, Association Européenne pour la Défense des Droits et des Libertés

Strasbourg, October 2026

Co-signed by:

FIDU (Federazione Italiana Diritti Umani)

[redacted]

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