



## Commentary

**How effective is the European Court of Human Rights against the human rights violations in Turkey?**

**VOCAL**  
**EUROPE**

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# HOW EFFECTIVE IS THE EUROPEAN COURT OF HUMAN RIGHTS AGAINST THE HUMAN RIGHTS VIOLATIONS IN TURKEY?

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## HOW EFFECTIVE IS THE EUROPEAN COURT OF HUMAN RIGHTS AGAINST THE HUMAN RIGHTS VIOLATIONS IN TURKEY?

As it is known by most, Turkey has been in an extraordinary atmosphere since the 15 July 2016 attempted coup. [Fotis Filippou, Amnesty International's Deputy Europe Director, describes this atmosphere where draconian powers are consolidated, critical voices are silenced and basic rights are stripped away<sup>1</sup>](#). Even though two-year-long state of emergency has been lifted shortly afterwards the 24 June snap election, Turkey's parliament has ratified a tough anti-terrorism bill proposed by the ruling party, only six days after the state of emergency had ended.

Analysts argue that not much has changed in Turkey, as the new law, which will be valid for three years, enhances authorities' powers in detaining the suspects and imposing public order, and also authorizes the government to dismiss public servants, members of Turkish Armed Forces, gendarmerie and police on the grounds of ties to a terror organization

What is going on in Turkey might not be very surprising for those who know the country's ups and downs of its democratic journey. In the recent past, democracy and human rights had significantly been distorted during 1980's military coup or 1990's anti-terror operations due to Kurdish conflict. Even though any human suffering and distress is unique, the nowadays human rights violations in Turkey are seen more massive and disproportionate than ever. Thousands of citizens, public officers, media outlets and educational institutions still seek justice before both national and international courts.

One expects that judiciary and the media ought to act against such human rights violations in a democratic country. Though, this seems to be luxury in today's Turkey as there is almost no room left for check and balance mechanisms. These aspects were highlighted during the panel titled *"Turkey before the European Court of Human Rights"*, organized by **Human Right Centre at Ghent University** on 6<sup>th</sup> of December. Under the moderation of Prof. Eva Brems, leading experts, from the field of law to media, discussed to what extent the ECHR mechanism is equipped to deal with the types of human rights violations that are encountered in Turkey today, referring to the repressive measures in the aftermath of the failed coup.

Erol Onderoglu, a Turkish-French journalist and a representative of Reporters Without Borders, firstly reemphasized ongoing problems in Turkish media environment with many legal cases against media professionals, who are accused of terrorist propaganda, defamation, intervening to fair trial, denigration of Turkish state, supporting coup plotters, insulting head of the state and so on. And the atmosphere is not very different either with regard to the judiciary.

Hence, Prof. Eva Brems indicated that Turkish judiciary cannot do much, as the domestic mechanisms while protecting human rights. Therefore, the institutions once

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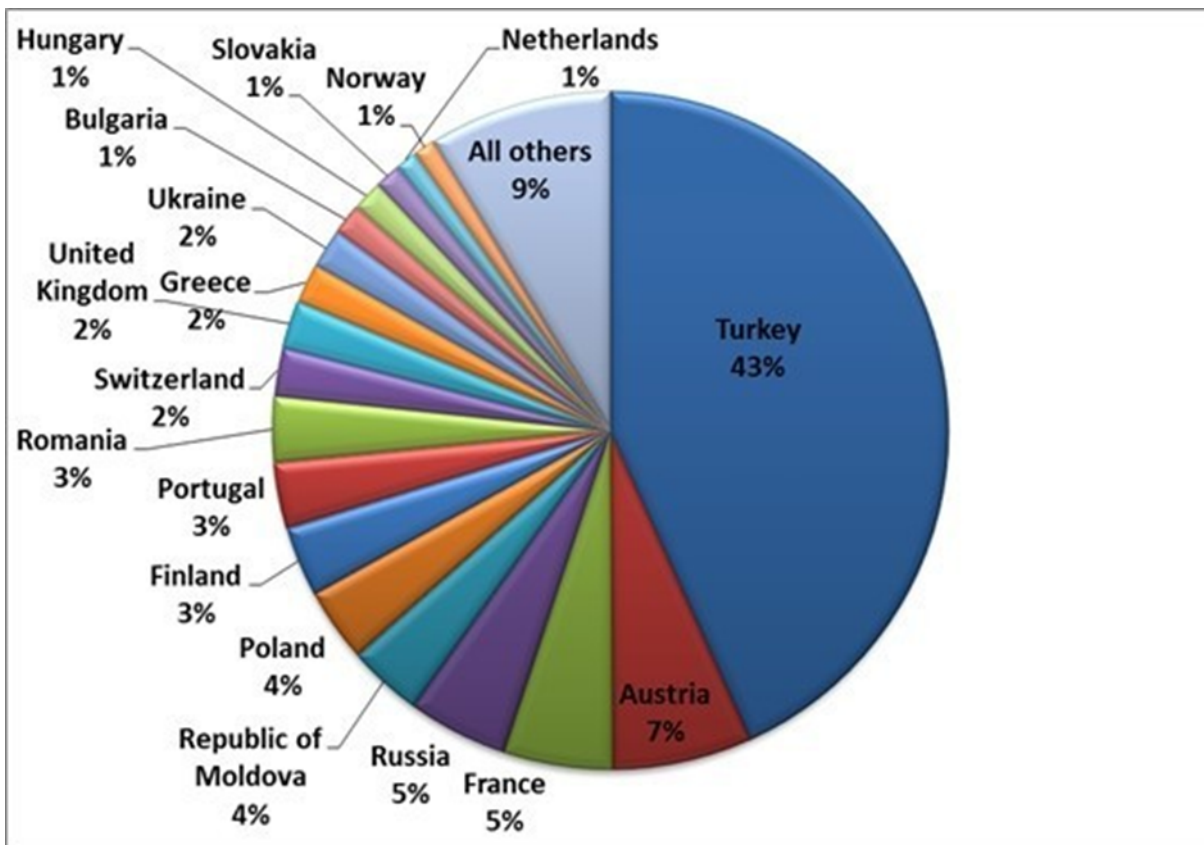
<sup>1</sup> <https://www.amnesty.org/en/latest/news/2018/07/turkey-lifting-of-state-of-emergency-must-pave-road-back-to-justice/>

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expected to check and balance the government are considered as powerless, useless and disappointment.

Since there seems to be no internal way out for victims, people tend to turn their eyes to external mechanisms which might offer an alternative solution to unjust treatments. In this regard, the ECHR primarily comes to the forefront. However, considering no major change has happened in Turkey since 2016, the transformative power of the ECHR has been disappointing for many. To understand the Court's efficiency, this article will discuss main arguments on the ECHR's capacity while dealing with human rights violations in Turkey.

**Image 1:** ECHR cases on freedom of expression by country-1959-2011



Source : [ECHR](#)<sup>2</sup>

## External and internal limitations of ECHR

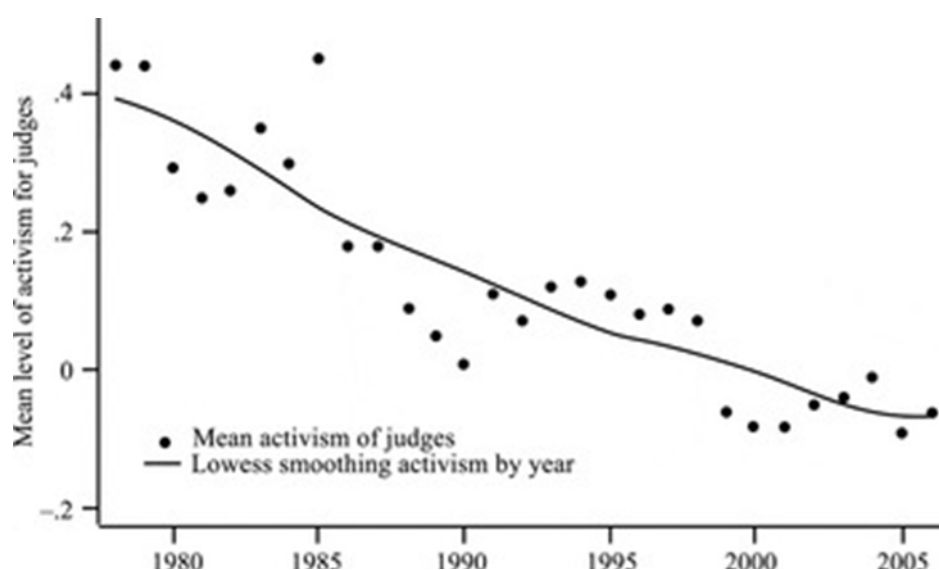
Before analyzing the ECHR's limitations, one has to be aware of the multidimensional dynamics between the worlds of politics, economics and law. Therefore, it is better to discuss these limitations under a specific approach, which encompasses the political, economic and legal limitations.

<sup>2</sup> <https://www.weforum.org/agenda/2016/07/european-convention-on-human-rights-what-it-is-and-why-it-matters-to-you/>

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One of the main criticisms against the ECHR is the way in which the Court does not only act in accordance with legal principles but also with political reality. In other words, human right activists from lawyers to journalists draw attention to how political dynamics get involved in the ECHR's decision-making process. Walter Van Steevenbrugge, a well-known Belgian lawyer who follows the cases related to human rights violations in Turkey at the ECHR, stressed that the Court has lost its activist role in recent years. He mentions that the ECHR rather takes a position “with its political gut feeling” than a strong humanitarian and activist position as it used to be.

**Image 2:** Temporal change in mean activism of ECHR judges



Source: [Eric Voeten, 2007](#)<sup>3</sup>

While going deeper under the ECHR's concessive approach, political reality should be analyzed in detail. According to Onderoglu, political actors such as the Council of Europe or the EU Member States have been adopting a rather mild tone than a strict one with regard to the current political context in Turkey, due to certain regional issues such as the refugee crisis and counter-terrorism.

In a period with various security concerns, the ECHR also appears to take responsibility not to damage any political ties with Turkey. Even though this approach might sound pragmatic at first, the way in which human rights are seen as political leverage or bargaining chip is more than problematic. The lack of a strategic vision, which here means a consistent and strong legal position, brings its own risks in the future, particularly in terms of public trust in rule of law and human rights infrastructure.

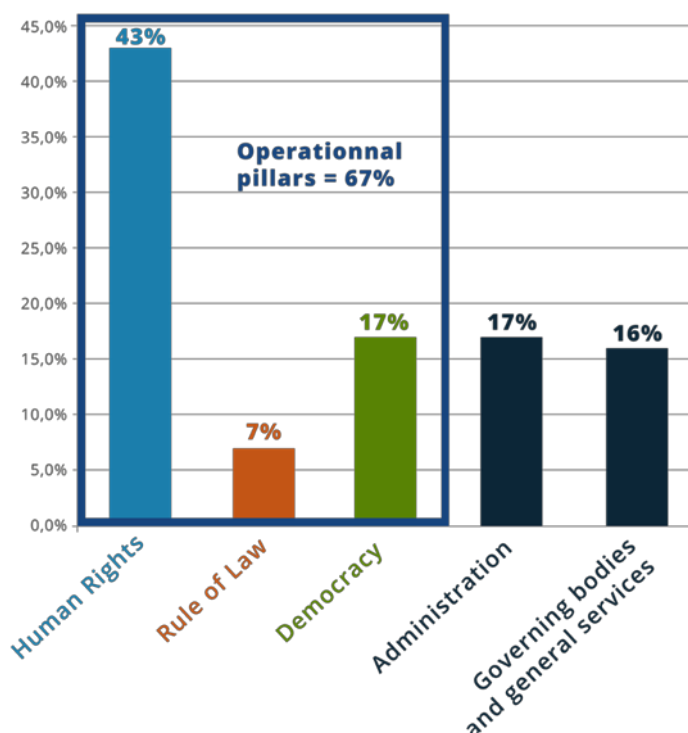
<sup>3</sup> <https://www.cambridge.org/core/journals/international-organization/article/politics-of-international-judicial-appointments-evidence-from-the-european-court-of-human-rights/F89AC156D2445A11971B710EC95F790A/core-reader>



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In addition to the political dynamics, human rights activists also mentioned the economic limitations of the ECHR. To open up this dimension, one must know the economic base on which the ECHR is conducted. First of all, the Court is funded by the ordinary budget of the Council of Europe. According to the latest data, human rights seems to be the most crucial title as it has the biggest share (43%) of the budget.

**Image 3:** Ordinary budget by pillar



Source: [Council of Europe](https://www.coe.int/en/web/about-us/budget?desktop=true)<sup>4</sup>

However, there is another side of this medal. Onderoglu mentioned that Turkey was one of the major contributors to the ordinary budget up until [the beginning of the financial year 2018](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808af7ac)<sup>5</sup>. Even though no direct evidence has been showed, he claimed that Turkey's major contribution might have had some influence on the ECHR's and the Council of Europe's concessive approach to human rights violations. Not to forget, similar critics to European states had also been raised on account of how mutual economic interests sometimes overshadow political and legal agenda.

Last but not least, the Court also has its own legal and procedural limitations. Dr. Eline Kindt, a legal expert on the ECHR's proceedings, stressed that the Court is overburdened by thousands of cases from Turkey. Even though there is a specific mean called "[pilot-judgement procedure](#)"<sup>6</sup> to deal with large groups of identical cases

<sup>4</sup> <https://www.coe.int/en/web/about-us/budget?desktop=true>

<sup>5</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808af7ac>

<sup>6</sup> Pilot\_judgment\_procedure\_ENG

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that derive from the same underlying problem, it is not realistic to expect immediate responses from the ECHR to every single violation.

For instance, even though the case of *Altan and Alpay v Turkey* was taken under special urgency provisions, the Court could only conclude its judgment process within one and a half year. In this regard, Kindt suggested that victims better consider domestic courts while seeking immediate result.

Eline Kindt also indicated that it should not be forgotten that the ECHR functions according to the principle of subsidiarity, which means that “the task of ensuring respect for the rights enshrined in the Convention lies first and foremost with the authorities in the Contracting States rather than with the Court [ECHR]. The Court [thus] can and should intervene only where the domestic authorities fail in that task.”<sup>7</sup>

In this regard, the Court firstly requires victims to apply to national courts. If no fair result is accomplished- i.e.: exhaustion of domestic remedies-, then ECHR takes action for further decision. In spite of well-defined principles in which the Court operates, different interpretations of those principles also draw some reactions. For instance, Prof. Brems stressed two main criticisms after the recognition of the “State of Emergency Procedures Investigation Commission” (SoE Commission) as a new domestic remedy. Firstly, European court rejected 25,000 Turkish coup attempt cases and asked all applicants to use this new domestic remedy<sup>8</sup>.

However, the Court’s rejection, which also includes earlier applications before the SoE Commission’s establishment, expectedly, has highly been criticized by many.

Secondly, the ECHR’s decision over the SoE Commission as a new domestic remedy has also caused certain eyebrows to rise. As both main opposition Republican People’s Party (CHP)<sup>9</sup> and academics<sup>10</sup> indicated earlier that the SoE Commission is far away from Venice Commission criteria and highly under governmental influence. In addition to five of seven members of the Commission who are appointed by the government, the long procedures, unjustified rejections and the vagueness of “terror” definitions are seen as other problematic issues related to the SoE Commission.

### Understanding the ECHR’s position

When we give ear to the ECHR, Prof. Eva Brems mentioned two responses to the criticism, though she particularly stressed that her personal position is rather critical toward the Court. In terms of the recognition of the SoE Commission as a new domestic remedy, first response is presented as an encouragement for Turkey to be self-sufficient about human rights. Therefore, with the recognition of new domestic

<sup>7</sup> [https://serval.unil.ch/resource/serval:BIB\\_A4FA8A7A4A0B.P001/REF](https://serval.unil.ch/resource/serval:BIB_A4FA8A7A4A0B.P001/REF)

<sup>8</sup> <http://www.hurriyetdailynews.com/european-court-rejects-25-000-turkish-coup-attempt-cases-122408>

<sup>9</sup> <http://www.milliyet.com.tr/aihm-yi-bile-komisyon-ile-siyaset-2607289/>

<sup>10</sup> <https://www.evrensel.net/haber/337931/aihm-bakmiyor-ohal-komisyonu-islemiyor>

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remedy, the Court seems to give a chance to the Turkish government to deal with its own problems. However, considering trustworthiness of Turkish government in human rights, this approach remains to be controversial.

Second response from the Court is to the criticism on the inadequacy of Turkish courts. As it can be remembered, the Constitutional Court of Republic of Turkey even remained insufficient while protecting human rights as [lower courts rejected demands for release of Mehmet Altan and Sahin Alpay by Turkey's top Court](#)<sup>11</sup>. However, the ECHR, again, did not evaluate Turkish judicial system as completely inadequate. The Court asserts that they are aware of the irregularities pertaining the Turkish judiciary and would follow next cases closely.

On one hand, whether human rights activists and victims agree or not, these two responses seem to be the ECHR's latest position against legal issues in Turkish judiciary. On the other hand, taking latest developments into consideration, the ECHR is expected to change its concessive position.

As a reminder, [the plea for release of Demirtaş, the former co-chair of the Peoples' Democratic Party \(HDP\) who has been in prison for over two years on terrorism charges, had been dismissed by a Turkish court on Nov. 30 even after the ECHR ruling.](#)<sup>12</sup>

### Is there any hope?

Despite of all of the clouds above Turkey, human right activists have some reasons to be hopeful. Johan Heymans, a prestigious Belgian lawyer, indicated that UNHR Committee works on a new report on human rights violations in Turkey. Its publication might bring more pressure on Turkish government, and it would also have additional impact on EU governments to adopt more powerful approach against the human right violations.

Moreover, there are some enforcement mechanisms to trigger against Turkish government. For instance, upon on-going resistance of Turkish government to the ECHR's rulings, Committee of Ministers of the Council of Europe might take action. Other diplomatic options, such as lobbying and demonstrations in the countries which have both human rights sensitivity and certain leverage against Turkish government, could be also options on the table.

Remembering that Turkey is not a major contributor to the budget anymore, the Council of Europe and the ECHR might replace its earlier approach with a stricter one. Following pilot decisions by the ECHR might also strengthen human right activists' hand against Turkish government.

<sup>11</sup> <https://turkeypurge.com/lower-court-rejects-demand-release-turkish-academic-turkeys-top-court-2>

<sup>12</sup> <https://www.reuters.com/article/us-turkey-security-demirtas/turkish-court-keeps-kurdish-politician-demirtas-in-jail-despite-echr-idUSKCN1NZIIR>



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On one hand, with the ECHR's own words<sup>13</sup>: “It is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by the Court to maintain a dynamic and evolutive approach would indeed risk rendering it a bar to reform or improvement”. On the other hand, it still is hard to argue that human rights infrastructure, in this case the ECHR, has teeth against sovereign states. Therefore, Turkish NGOs still have the greatest responsibility to convince Turkish public in order to bring the government into a fair line.

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<sup>13</sup> <http://www.amicuscuriae.it/attach/superuser/docs/goodwin.pdf>

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