EUROPEAN COURT OF HUMAN RIGHTS

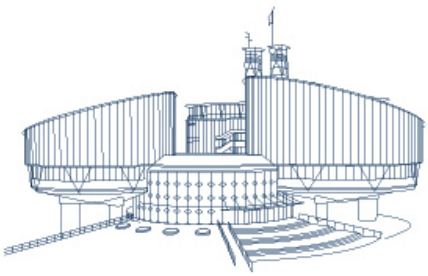
# PRESS RELEASE

## LAWYER AND HUMAN-RIGHTS DEFENDER DETAINED DESPITE CONSTITUTIONAL COURT RULINGS IN HIS FAVOUR MUST BE RELEASED IMMEDIATELY AND ALLOWED TO TAKE UP HIS SEAT AS MP

## Şerafettin Can Atalay v. Türkiye

ECHR 288 (2026) 17.11.2026

Press release issued by the Registrar of the Court



In today's Chamber judgment[1] in the case **Şerafettin Can Atalay v. Türkiye** (application no. 11503/24) the European Court of Human Rights held:

- by 6 votes to 1, that there had been **a violation of Article 5 § 1 (right to liberty and security), Article 3 of Protocol No. 1 (right to free elections) and Article 18 (limitation on use of restrictions on rights)**; and,

- unanimously, that there had been **a violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court)** of the European Convention on Human Rights.

The case concerned the continued detention of Şerafettin Can Atalay, a lawyer and human-rights defender, following his election in 2023 as an MP, despite two subsequent Constitutional Court judgments ruling that he had parliamentary immunity and ordering his release.

At the time of his election, Mr Atalay was detained pending an appeal against his conviction for attempting to overthrow the government after participating in the 2013 widespread protest movements in Türkiye (known as "the Gezi Park events").

The Court found that Mr Atalay's continued detention after his election, without a review mechanism leading to his release, and his resulting inability to take up his seat as MP had not been lawful. This had also amounted to an unjustified interference with his right to stand for election and to sit in Parliament and with the free expression of the will of the people.

The Court emphasised that for another court, the Court of Cassation, to call into question the powers of a constitutional court to deliver final and binding judgments ran counter to the rule of law. It saw no reason to depart from the Constitutional Court judgments in Mr Atalay's favour, which had been clear and unambiguous.

Moreover, the Court of Cassation's refusal to implement a second decision by the Constitutional Court in Mr Atalay's favour was unprecedented. The situation had been aggravated by the criminal complaint filed by the Court of Cassation against the Constitutional Court judges who had voted in favour of finding a violation in Mr Atalay's case.

Overall, Mr Atalay's continued detention could not be seen in isolation; it had been intended to silence him. Such an ulterior motive was particularly serious as it could have a dissuasive effect on the work of human-rights defenders.

It therefore held under Article 46 (binding force and enforcement) that Mr Atalay should be released and allowed to take up his seat as MP, and that Türkiye had to take steps to avoid similar future violations.

As concerns just satisfaction (Article 41), the Court held that Türkiye was to pay Mr Atalay 32,500 euros (EUR) in respect of non-pecuniary damage.

## PRINCIPAL FACTS
## AND COMPLAINTS

The applicant, Şerafettin Can Atalay, is a Turkish national who was born in 1976 and is being detained in a prison in Istanbul.

On 25 April 2022 the Istanbul Assize Court convicted Mr Atalay for attempting to overthrow the Government or to prevent it from performing its functions. Finding that he had aided and abetted Mehmet Osman Kavala (see the European Court's recent Grand Chamber judgment *Kavala v. Türkiye (no. 2)*) in these offences, it sentenced him to 18 years' imprisonment and made a separate order for his detention. He has been detained since that date.

While Mr Atalay's appeal against this decision was still pending in the Court of Cassation, he stood for the Workers Party of Türkiye in the parliamentary elections of 14 May 2023 and was elected as an MP for the province of Hatay.

Following his election, Mr Atalay applied to the Court of Cassation, claiming parliamentary immunity. He requested his release and the stay of the criminal proceedings against him. The Court of Cassation rejected his request in July 2023. It concluded that Mr Atalay was not entitled to parliamentary immunity because his situation came within the scope of the exceptions under the Constitution. It finalised his conviction on 28 September 2023.

Following an application lodged by Mr Atalay, in October 2023 the Constitutional Court concluded that his continued detention following his election was not lawful and breached his right to liberty and security. It found in particular that he should have benefitted from parliamentary immunity after his election as an MP. The court ordered his release, and the reopening and stay of the criminal proceedings against him. This judgment was transmitted to the Assize Court, which referred the case to the Court of Cassation.

The Court of Cassation subsequently refused, however, to implement the Constitutional Court judgment, reiterating the findings of its July 2023 judgment. It also ruled that the Constitutional Court had exceeded its jurisdiction by acting as a fourth-instance court, and filed a criminal complaint against the Constitutional Court judges who had voted in favour of finding a violation of Mr Atalay's rights.

In January 2024 the Court of Cassation again refused to implement a second judgment by the Constitutional Court in Mr Atalay's favour.

As a result of these refusals, Mr Atalay was not able to take up his seat in Parliament and his mandate as MP was eventually terminated on the basis of his conviction.

Relying on Article 5 § 1 (right to liberty and security) of the Convention, Mr Atalay complained about his continued detention, despite his election as an MP and the Constitutional Court findings in his

favour. He also complained under Article 5 § 4 (right to liberty and security) that the Constitutional Court could no longer be considered an effective legal avenue owing to the authorities' failure to implement its judgments. He alleged that, as a result of his continued detention and the non-implementation of the Constitutional Court's judgments in his favour, he had not been able to take up his seat in Parliament, in breach of Article 3 of Protocol No. 1 (right to free elections). Lastly, he alleged that his continued detention had been politically motivated and had the ulterior purpose of silencing him, in breach of Article 18 (limitation on use of restrictions on rights). He argued in particular that the refusal to implement the Constitutional Court's judgments had been encouraged by the Turkish President and other public officials, referring to statements they had made to the press and on social media.

## OUTCOME

## REASONING OF THE COURT

The Court reiterated that the Constitutional Court was the supreme judicial authority with the power to give a binding interpretation of the constitutional guarantees of individual rights. In principle implementation of Constitutional Court judgments should not be an issue in Türkiye.

The Court of Cassation had, however, refused to implement the judgments in favour of Mr Atalay and to release him.

The Court went on to note the Turkish Government's argument that as the Court of Cassation had not approved the Constitutional Court decisions, Mr Atalay's conviction remained valid and his continued detention was lawful. That line of reasoning meant in essence that the Constitutional Court's decisions were subject to approval by the national courts concerned, which was neither in keeping with the European Court's case-law nor with the principles established in the Turkish Court of Cassation's own decisions.

The Court found that Mr Atalay's continued detention following his election as an MP despite the Constitutional Court's power to review the lawfulness of detention and its clear and unambiguous findings in his case had not been "lawful" or "in accordance with a procedure prescribed by law". There had therefore been a violation of Article 5 § 1.

The failure to implement the Constitutional Court's judgments meant that the Turkish legal system had failed to provide Mr Atalay with a review mechanism that could lead to his release, in violation of Article 5 § 4. The Court emphasised that that conclusion was limited to the circumstances of Mr Atalay's case and did not call into question the functioning or effectiveness of the Constitutional Court as a whole, but instead shed light on the attitude of certain lower courts as to the binding force of its judgments.

The Court also ruled that Mr Atalay not being able to take up his seat in Parliament, the termination of his mandate because of his conviction and his continued detention had not only amounted to an unjustified interference with his right to stand for election and to sit in Parliament but also with the free expression of the will of the people, in violation Article 3 of Protocol No. 1.

The Court pointed out that Mr Atalay's situation could not be viewed in isolation. It had to be placed in the context of the detention of other political opponents, human-rights defenders and journalists in Türkiye. It also assessed the particular circumstances of the case, such as: the Court of Cassation's unprecedented second refusal to implement a Constitutional Court judgment, which could not be explained solely by a legitimate legal debate between the superior courts (as argued by the Turkish Government); and, the discrepancy in the Court of Cassation's own case-law regarding the effects of Constitutional Court judgments. That situation had been aggravated by the criminal complaint filed by the Court of Cassation against the Constitutional Court judges who had voted in favour of finding a violation in Mr Atalay's case. The Court also took into account the statements by the President of Türkiye and his Chief Advisor supporting the Court of Cassation's stance and concerns raised by the Council of Europe's Venice Commission and the Commissioner of Human Rights about an environment of political pressure undermining the independence of the judiciary. Against that overall background, the Court ruled that Mr Atalay's continued detention had been intended to

silence him and to stifle pluralism. The ulterior motive in Mr Atalay's case could have a dissuasive effect on the work of human-rights defenders and had therefore been particularly serious, in violation of Article 18 in conjunction with Article 5 and Article 3 of Protocol No. 1.

Lastly, the Court held under Article 46 that Türkiye had to release Mr Atalay and to allow him to take up his seat in the Parliament. It emphasised that full compliance with Constitutional Court judgments was essential to the rule of law and that it was for Türkiye to take measures to prevent similar future violations.

## SEPARATE OPINION

Judge Yüksel expressed a partly concurring and partly dissenting opinion which is annexed to the judgment.

## PROCEDURE AND COMPOSITION OF THE COURT

The application was lodged with the European Court of Human Rights on 16 April 2024.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
Saadet **Yüksel** (Türkiye),
Jovan **Ilievski** (North Macedonia),
Oddný Mjöll **Arnardóttir** (Iceland),
Gediminas **Sagatys** (Lithuania),
Stéphane **Pisani** (Luxembourg),
Hugh **Mercer** (the United Kingdom),

and also Dorothee **von Arnim**, *Deputy Section Registrar.*

*The judgment is available only in English.*

*The Court's judgments finding a violation are binding on the State concerned. The Committee of Ministers of the Council of Europe, the executive body of the Council of Europe, supported by the Department for the Execution of Judgments of the European Court of Human Rights, is responsible for supervising their implementation.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

[1] Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.