

TO THE CHAIR OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF
EUROPE

(Kavala v. Turkey [Application No. 28749/18])

DGI

12 JAN. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

The second trial after the consolidation of the Çarşı and Gezi trials was held on 26 November 2021 in the Istanbul 13th Assize Court where Osman Kavala, the applicant, is being tried for violating Articles 328, 319, and 312 of the TCC.

- 1- Osman Kavala did not attend this hearing because he believes that the court's decisions concerning his detention are not based on impartial legal considerations and he is not getting a fair trial. At the end of the hearing, the Istanbul 13th Assize Court once again ruled that the requests of the attorneys of the applicant for release shall be dismissed and that the detention of the applicant shall continue and be evaluated on 23 December 2021 based on the case file, on the grounds that "judicial control measures would be inadequate due to the quality and nature of the charge; the current stage of the trial; the investigation conducted into the HTS records and cell tower data in the file; the reports prepared after the investigation conducted into the digital materials; and the upper limit of the penalty stipulated in the Law for the crimes with which the defendant has been charged."
- 2- As a result of the evaluation, which was based on the case file as our request for the evaluation to be made with a hearing was rejected on 20 December 2021, the Court ruled that the detention of the applicant shall continue on the same grounds as those specified in the court decision issued on 26 November 2021.
- 3- In this process, the President of the Republic of Turkey, the Leader of the Nationalist Movement Party (MHP), and the Minister of Foreign Affairs continued to make statements about the applicant.

- In his speech on 21 October 2021, the President said, "*In the international community, Kavala is what Soros is. They are trying to unsettle (countries) wherever they want and however they want, using their money. They should be followed closely.*"¹

¹ <https://www.yenisafak.com/gundem/cumhurbaskani-erdogan-uluslararasi-camiada-soros-ne-ise-kavala-o-3708053>, 21 October 2021.

- When answering the question of a journalist on 8 December 2021, the President said, “*We do not recognize the decisions of the European Union (The question was wrongly formulated with reference to the “decisions of the European Union” and the President answered without correcting it) regarding Kavala, Demirtaş ...It is as simple as this. We assume that these decisions do not exist. For us they are non-existent. We have explained this many times. They might or might not understand it. We do not recognize the decision of the European Union superseding the decisions made by our own judiciary*”.²

- During the live broadcast on national TV channels on 24 December 2021, the President said, “*...those who tell us to raise interest rates and those who tell us to release the provocateur of the Gezi Park events (referring to Osman Kavala) are in the same circle. They work for Soros. Those who have become rich by earning interest on their money and those who have made the poor even poorer in this country are on the same side.*”³

- In the group meeting of his party on 23 November 2021, the Leader of the Nationalist Movement Party (MHP) that supports and enables the government to maintain majority in the Parliament said, “*Kılıçdaroğlu said that they did not consider the detention of Demirtaş and Kavala appropriate. In this country, there is no place for Soros’ men who try to undermine us.*”⁴

- In a different vein, in his speech during the deliberations on the budget in the General Assembly of the Turkish Parliament on 13 December 2021, the Minister of Foreign Affairs said, “*...Turkish Courts executed the judgment of the European Court of Human Rights regarding Kavala and (Kavala) was released. As there were other charges against Kavala, he did not leave the prison...France has not been executing the judgments of the ECtHR for 10 years. Norway, which is supposedly one of the leading democracies, has not been executing them for 2 years, while Germany has not been executing those decisions for 5 years. Why is*

² <https://m.bianet.org/bianet/siyaset/254483-erdogan-ab-nin-kararlarini-tanimiyoruz>, 8 December 2021.

³ <https://www.aa.com.tr/tr/gundem/cumhurbaskani-erdogan-programin-aciklanmasindan-beri-turk-lirasi-mevduatlar-23-8-milyar-liranin-uzerinde-artti/2456928>, 24 December 2021.

⁴ <https://www.birgun.net/haber/bahceli-bize-gore-hukümetin-ekonomi-politikasi-dogrudur-366771>, 23 November 2021.

the Committee of Ministers of the Council of Europe only targeting Turkey, when these countries do not execute the judgments of the ECtHR?”⁵

- 4- The statement of the Minister of Foreign Affairs that “The judgment of the ECtHR has been executed” does not reflect the actual developments: Osman Kavala’s detention continued despite the judgement of the ECtHR until the decision of acquittal issued at the end of the Gezi trial. He was taken into custody on the day he was acquitted. The next day, he was re-arrested on the allegation of participating in the attempted coup of July 15 (Article 309 of the TCC), an allegation which the ECtHR had evaluated and found not to be based on evidence raising reasonable suspicion for detention. This detention order was revoked only after the applicant was arrested for the third time, this time on the charge of espionage. It was **not** the judgment of the ECtHR which was the reason for the revocation of this order. It was not possible to continue the detention of the applicant on the charge of participating in the attempted coup given the regulation introduced on 24 November 2019, according to which an indictment should be issued within two years after arrest and that no indictment was issued in this period. Moreover, the espionage charge was based on the same facts evaluated by the Court in its judgement on the case.

- 5- As can be understood from the statements of the political authorities mentioned above, political motivations continue to dominate Kavala’s detention, and the facts leading the ECtHR to rule that Article 18 of the ECHR was violated remain valid. The President’s statements contradict the information submitted by the Turkish Government to the Committee of Ministers of the Council of Europe and such statements are of a nature to influence the judiciary. Given the prolongation of Osman Kavala’s detention with the fabrication of the charge of espionage on the basis of the same investigation file and the same evidence after the finalization of the ECtHR ruling and with the merging of different cases, it has become urgent for the ECtHR to make a legal evaluation of this process so that it could be clearly understood that the applicant’s ongoing detention constitutes a continuation of the violation of his human rights found by the Court and there is a clear refusal on the part of Turkey to implement the Court’s judgement in violation of Article 46.

⁵ <https://www.gazeteduvar.com.tr/cavusoglu-aihmin-kavala-karari-uygulandi-haber-1545362>, 13 December 2021.

6- We respectfully request that your Committee adopt a resolution calling for the enforcement of Article 46(4) of the ECHR.

Applicant's Attorney

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