
1459th meeting, 7-9 March 2023 (DH)

H46-27 *Kavala v. Türkiye* (Application No. 28749/18)

Supervision of the execution of the European Court's judgments

Reference document
CM/Notes/1459/H46-27

Decisions

The Deputies

1. recalled the Court's findings in the *Kavala v. Turkey* judgment of 10 December 2019, that the applicant's arrest and pre-trial detention took place in the absence of evidence to support a reasonable suspicion he had committed an offence (violation of Article 5, paragraph 1, of the Convention) and pursued an ulterior purpose, namely to silence him and dissuade other human rights defenders (violation of Article 18 taken in conjunction with Article 5, paragraph 1); and that the one year and nearly five months taken by the Constitutional Court to review his complaint was insufficiently "speedy", given that his personal liberty was at stake (violation of Article 5, paragraph 4); together with the Court's indication under Article 46 of the Convention that any continuation of the applicant's pre-trial detention would entail a prolongation of the violations of Article 5, paragraph 1, and of Article 18, as well as a breach of the obligations on the respondent State to abide by the Court's judgment in accordance with Article 46, paragraph 1, of the Convention, and that in consequence Turkey was required to take all necessary measures to put an end to the applicant's detention and to secure his immediate release;
2. noted that the purpose of Article 18 of the Convention is to prevent the misuse of power; underlined the exceptional nature of the present case, given that in the history of the Convention system the Court has found a violation of Article 18 in only 22 final judgments, of which only 18 involved violations of both Article 5 § 1 and Article 18 on the basis that the applicant was detained in criminal proceedings in the absence of reasonable suspicion that he had committed an offence and for the ulterior purpose of silencing him; and fewer still where the applicant was still detained on the date the judgment became final and remained in detention despite the Court's findings and the repeated calls by the Committee of Ministers for his release;
- 3 recalled that, against this background, at the 1423rd meeting (2 February 2022), the Committee adopted Interim Resolution CM/ResDH(2022)21, considering that, by not having ensured the applicant's immediate release, Türkiye was refusing to abide by the final judgment of the Court, and deciding therefore to refer to the Court, in accordance with Article 46, paragraph 4, of the Convention, the question whether Türkiye has failed to fulfil its obligation under Article 46, paragraph 1, to abide by the *Kavala v. Turkey* judgment of 10 December 2019;
4. recalled further that the Court delivered its judgment under Article 46 § 4 on 11 July 2022 concluding, *inter alia*, that its finding of a violation of Article 18 taken together with Article 5 in the *Kavala* judgment had vitiated any action resulting from the charges related to the Gezi Park events and the attempted coup and that the domestic proceedings, which resulted in the applicant's conviction, had not made it possible to remedy the problems identified in the *Kavala* judgment; and therefore that Türkiye had failed to fulfil its obligation under Article 46 § 1 to abide by the *Kavala v. Turkey* judgment of 10 December 2019;
5. noted that, under Article 46 § 5 of the Convention, when the Court finds a violation of Article 46 § 1, the case is referred back to the Committee of Ministers for consideration of the measures to be taken;

As regards individual measures

6. deeply deplored that Mr Kavala remains in detention;
7. noted with interest the visit of the co-rapporteurs of the Parliamentary Assembly to Türkiye;
8. underlining that the Committee of Ministers has the exclusive competence to supervise the execution of the judgments of the European Court, stressed that further and timely engagement by the authorities with the Committee is essential, recalling the availability of its Liaison Group to this end;
9. recalling the shared responsibility of all competent authorities, including the judiciary, to achieve *restitutio in integrum*, and that the judicial instances are capable of putting an immediate end to the applicant's detention, urged the competent Turkish authorities to ensure that all the negative consequences of the criminal charges brought against the applicant are eliminated without further delay, in particular by ensuring that he is immediately released;

As regards general measures

10. underlining again the rarity of violations of Article 18 taken in conjunction with Article 5 as found by the Court and considering that the Court's findings indicate serious issues with the rule of law within the criminal justice system, called for reinforced guarantees for judicial independence from political pressure;
11. deeply regretted the apparent lack of will to acknowledge the need for legislative and other measures to bring the structure of the Council of Judges and Prosecutors into line with the Council of Europe standards; strongly urged the authorities to take all necessary measures to protect the judiciary from undue influence from the executive branch, taking inspiration from the relevant Council of Europe standards, in particular as regards the structural independence of the Council of Judges and Prosecutors; and urged them to provide information about the measures envisaged in this respect, in the form of a comprehensive action plan, to be submitted in time for the Committee's next examination of the general measures at its 1475th September 2023 (DH) meeting.