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DGI Directorate General of Human Rights and Rule of Law  
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22.05.2020

### **Rule 9.1 Communication in the case of Kavalá v. Turkey (28749/18)**

1. This submission is made, under Rule 9.1 of the Rules of the Council of Europe Committee of Ministers, by the applicant's lawyers Prof. Dr. Köksal Bayraktar, Deniz Tolga Aytöre, İlkan Koyuncu, and it concerns the execution of the European Court of Human Rights judgment 28749/18, finalized on 12 May 2020.

2. In its judgment concerning application no.28749/18, the European Court of Human Rights established "that there was no concrete evidence grounding a reasonable suspicion necessitating Osman Kavalá's pre-trial detention under Articles 309 and 312 of the Turkish Criminal Code; that there was no reasonable suspicion that the applicant had had violent intentions; that Osman Kavalá's concerned acts were related to the mere exercise of rights guaranteed by the Convention; that extended detention of a human-rights defender was pursued with the ulterior purpose of reducing him to silence"; and accordingly the Court held that there had been a violation of Article 5 § 1, Article 5 § 4 and Article 18 of the European Convention of Human Rights.

3. Pursuant to the judgment, the applicant's immediate release must be secured /(paragraph no 240). Although the judgment became final on 12 May 2020, the applicant Osman Kavalá has not been released.

### **Developments after the ECtHR judgment of 10 December 2019**

4. Through its decision no 2019/74 E. 2020/34 K. dated 18.02.2020, the Istanbul 30th Assize Court ruled on the ACQUITTAL of the applicant. In its reasoning, the Assize Court noted "that the observations made in the indictment concerning the alleged offence are grounded on telephone tapping records; however, the interception warrant was not duly issued and hence the wiretapping records are considered to be unlawful and do not constitute evidence; that the witness Murat Eren did not cite any concrete fact and other witnesses did not make any statements based on witnessed and factual information; that the report by the Financial Crimes Investigation Committee (MASAK) did not establish any activity with respect to the provision of financial support."



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5. Even though the Assize Court issued a release order alongside the acquittal decision, which was received by the Silivri Closed Penitentiary Institution around 15:00, [release] procedures were slowed down. While the applicant was waiting for his release, he was informed that there was a detention order issued for him; he was taken from the penitentiary institution by police officers at 20:30 and was placed in police custody at İstanbul Security Headquarters. Thereupon, the İstanbul Chief Public Prosecutor's Office released a press statement, noting "that a petition of appeal has been submitted against the acquittal decision issued by the 30th Chamber of the İstanbul Assize Court; that appeal procedures will be initiated upon the finalization of the written text of reasoning; that there is a separate detention order for the suspect Mehmet Osman Kavala - for whom a release order was already issued - under an investigation conducted by our Public Prosecutor's Office, on charges of Attempting to Overthrow the Constitutional Order under Article 309 of the Turkish Criminal Code".


6. The President of the Republic of Turkey made the following statement during the Parliamentary Group Meeting of the Justice and Development Party (AKP) concerning the acquittal decision issued for the applicant: "This is not simply an innocent act of uprising. There are Soros-like people behind the scenes who seek to stir up things by provoking revolt in some countries. Their Turkey branch was behind bars. They attempted to acquit him with a manoeuvre yesterday".

( [https://www.washingtonpost.com/opinions/global-opinions/a-civil-society-activists-arrest-is-another-sign-of-the-erdogan-regimes-cruelty-and-paranoia/2020/02/22/a4764ae4-533f-11ea-9e47-59804be1dcfb\\_story.html](https://www.washingtonpost.com/opinions/global-opinions/a-civil-society-activists-arrest-is-another-sign-of-the-erdogan-regimes-cruelty-and-paranoia/2020/02/22/a4764ae4-533f-11ea-9e47-59804be1dcfb_story.html) )

(<http://bianet.org/english/politics/220275-president-erdogan-on-gezi-trial-they-attempt-to-acquit-him-with-a-maneuver>)

(<https://www.hurriyetdailynews.com/osman-kavala-re-arrested-after-acquittal-152233>)

7. On the very same date, the applicant was referred by the İstanbul Police Headquarters to the court, without being questioned, and subsequently the Prosecutor's Office requested his arrest under the investigation no 2017/96115, again without questioning him or taking his statement. The İstanbul 8th Magistrate's Court questioned the applicant under the examination no 2020/154, and ordered his re-arrest in contravention of the judgment of the European Court of Human Rights. The arrest warrant issued by the Magistrate's Court is grounded on the reasoning "that based on communication [surveillance and interception] analysis, the suspect Mehmet Osman KAVALA came together with another suspect Hanrey Barkey on 27 June 2016 - prior to the coup attempt - in Şişli district at the office of Menka Joint Stock Company owned by the suspect Mehmet Osman KAVALA, and that both suspects subsequently came together again on 30 June 2016 in Diyarbakır province where they also met people who are in contact with the Terrorist Organization PKK; likewise considering Hanrey





Barkey's contacts with FETÖ/PDY, the fact that both suspects' mobile phones emitted signals from the same base station in the same time period and that there is a suspicion of a flight risk of the suspect due to the release order issued in the Gezi Park case do constitute grounds for his detention."

8. The applicant's complaint lodged against the arrest order was dismissed by the Istanbul 9th Magistrate's Court on 25 February 2020.

9. While the applicant was still under pre-trial detention, despite the judgment of the European Court of Human Rights calling for his immediate release, he was referred to the Magistrate's Court on Duty with an arrest request made once again by the Istanbul Chief Public Prosecutor's Office on the same investigation file (2017/96115), but this time on charges of securing information that, due to its nature, must be kept confidential for reasons relating to the security or domestic or foreign political interests of the State, for

the purpose of political or military espionage. The Prosecutor's Office grounded its request for applicant's arrest under Article 328 of the Turkish Criminal Code, reasoning "that the suspect Henri Jak Barkey carried out lobbying activities to promote the [terrorist] organization leader Fethullah Gülen; that the suspect personally attended the meeting at Büyükdada Splendid Hotel; that the suspect was restless and nervous on that day according to the witness account of an hotel staff; that he was in contact with the suspect Mehmet Osman Kavala and there were ongoing inquiries and investigations into their connection; that there were dates when both suspects' mobile phones emitted signals from the same base station; and that they came across at a restaurant in Karaköy on 18 July 2016".

10. On 09 March 2020, upon its examination no 2020/272, the Istanbul 10th Magistrate's Court ordered the detention of the applicant under Article 328 of the Criminal Code, reasoning "that considering [the suspect's] contacts with Henri Jak Barkey, who undertakes intelligence missions and acts in the name of terrorist organizations and foreign states, based on [the [evidence in] the investigation file including the periodic signals emitted from the same base station on 27/11/2014, 01/06/2015, 03/06/2015, 05/06/2015, 07/03/2016, 09/03/2016, 28/06/2016, 29/06/2016, 18/07/2016 as well as the consistent signals emitted between 11/2014 and 07/2016, taken together with the fact that [both suspects] were seen at a restaurant on 18/07/2016 and that according to his own statements the suspect met Henri Jak Barkey at conferences where issues in Turkey and the Middle East were debated; there existed a strong suspicion that the suspect committed the alleged offence, and given the nature of the offence in question as well as the lower and upper sentence limits envisaged by the law; it has been established that detention [pre-trial detention] is a proportional measure within the meaning of Article 100 and the subsequent articles of the Turkish Criminal Code."



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11. On 20 March 2020, the applicant was released ex officio on charges under Article 309 of the Turkish Criminal Code as part of the investigation 2017/96115 conducted by the Istanbul Chief Public Prosecutor's Office. However, as part of the very same investigation file, he was re-arrested under Article 328 of the Criminal Code on espionage charges, thus he - once again - was not released from prison.

12. The applicant complained against the detention order within due time; however, through its ruling no 2020/1938 D.İş issued on 01 April 2020, the Istanbul 11th Magistrate's Court dismissed the appeal and ordered his continued detention. The Magistrate's Court justified its detention order by reasoning "that upon the examination of the reasoning of the said court decision, the court decision complies with the procedure and the law, and that there are no reasons that would entail the alteration of the said court decision".

### Conclusions

13. The applicant is still detained in prison in contravention of the final judgment of the European Court of Human Rights which established the violation of rights.

14. The applicant was arrested three times and was released two times under the same investigation file. However, he has been held in prison continuously since 2017.

15. The ongoing investigation against the applicant is not grounded on legal reason. In order to avoid the release of the applicant and the execution of the ECtHR judgment, the Government of the Republic of Turkey assures that there are arrest warrants issued against the applicant under the same investigation file but on different charges. The statement "they attempted to acquit him with a manoeuvre" made by the President of the Republic of Turkey upon the acquittal decision as well as the applicant's re-arrest - before he could even leave the prison - on the basis of the very same evidence under the same investigation file yet on a different charge are self-evident.

16. The World Health Organization has declared Covid-19 as a pandemic. The applicant has been in prison [in pre-trial detention] for more than two and a half years, under severe conditions. Considering that detention [pre-trial detention] is an injunction measure - in conjunction with the fact - that there is no conviction [against the applicant] [undermining] his presumption of innocence, and that the safety and security of his life should be guaranteed on account of the pandemic; the judgment of the European Court of Human Rights must be executed without any further due and the applicant must be released immediately.



17. The Committee of Ministers must recognise that the continuing detention of Osman Kavala violates Article 46 of the European Convention on Human Rights concerning the binding nature of final judgments of the European Court of Human Rights.

18. The Committee of Ministers must request the immediate release of our applicant, Osman Kavala to ensure the full execution of the judgment of the European Court of Human Rights.

19. The Committee of Ministers should urgently and continuously place the lack of implementation of urgent individuals measures in the case of Kavala v. Turkey on its agenda.

Mehmet Osman Kavala's  
Representative

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