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Meeting: 1419th meeting (December 2021) (DH)

Communication from the applicant (08/11/2021) in the case of Selahattin Demirtas v. Turkey (No. 2) (Application No. 14305/17).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1419^e réunion (décembre 2021) (DH)

Communication du requérant (08/11/2021) relative à l'affaire Selahattin Demirtas c. Turquie (n° 2) (requête n° 14305/17) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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08.11.2021
Sent by e-mail

COMMUNICATION

**In accordance with Rule 9.1 of the Rules of the Committee of Ministers regarding the
supervision of the execution of judgement**

in the case of *Selahattin Demirtaş v. Turkey* (no. 2) [GC]

(App. No: 14305/17)

Executive Summary

The Ankara 22nd Assize Court decided for the continuation of the applicant's detention in a repetitive decision listing the same reasoning as its previous decisions. The Constitutional Court has not yet decided on the applicant's individual application. High-level state officials have continued to target the applicant and his family, calling them 'terrorists' and 'murderers'. State officials also voiced their resistance against the judgments of the European Court of Human Rights in their statements concerning the release of Osman Kavala. The applicant's request to benefit from conditional release was rejected on 2 November 2021 on the grounds that he has not shown good conduct and remorse. The two cases cited by the Observation Board to argue that the applicant did not show good conduct and that he should thus not be released, are the cases regarding the 4-year 8-months prison sentence upheld by the Court of Cassation (referred as the 'second set of proceedings' by the Secretariat of the Committee) and the ongoing case concerning his second detention before the Ankara 22nd Assize Court (referred as the 'third set of proceedings' by the Secretariat of the Committee). These recent developments clearly demonstrate that there is resistance against executing the Grand Chamber judgment and the decisions of the Committee of Ministers which have urged that the applicant is immediately released. With the applicant's prolonged detention, his rights guaranteed under the Convention continue to be violated.

Recent Developments

1. In light of new developments, it has become necessary to inform the Committee of recent events which took place after the applicant's Rule 9.1 submission dated 20 October 2021 and the Government's response dated 28 October 2021.
2. The hearing of the case before the Ankara 22nd Assize Court regarding the second detention of the applicant was held on 18-19-21-22-25-26-27 October 2021. On 27 October 2021, the court decided for the continuation of the applicant's detention and this decision was appealed on 3 November 2021.

3. The next hearing was postponed to 8-9-11-12-15-16-18-19 November 2021. As stated in our previous statements and as will be discussed in detail below, in parallel with the statements of high-level state officials, there is an attempt to conclude the applicant's case as soon as possible and to change the applicant's status to convicted. It is evident that attempts to hastily conclude a trial which involves 108 defendants damages the defendants' -among which is the applicant- and their rights to be defended guaranteed under Article 6 of the Convention.

Statements from High-Level State Officials Targeting Selahattin Demirtaş

4. Statements from high-level state officials which target the applicant and his family have continued. The applicant was also repeatedly mentioned in statements targeting Osman Kavala, who has not been released from prison despite the judgment of the European Court of Human Rights and decisions by the Committee of Ministers. Hence both Mr. Demirtaş and Mr. Kavala are in a similar position as applicants.
5. Most recently, Osman Kavala had his hearing on 8 October 2021 in the case which was joined with the Çarşı group case. The court decided for the continuation of Mr. Kavala's detention. After attending Mr. Kavala's hearing, the European Parliament Rapporteur for Turkey delivered a statement "call[ing] on Turkey to respect European Court of Human Rights sentences and end politically-motivated fabricated prosecutions". Stating that "The European Parliament [was] dismayed at the resistance of Turkish authorities to abiding by the rulings of the European Court of Human Rights", the rapporteur asked Turkish authorities to respect the rule of law and comply with their obligations under the Convention.¹
6. In a joint press statement on 18 October 2021, the ambassadors of Canada, Denmark, Finland, France, Germany, the Netherlands, New Zealand, Norway, Sweden and the United States of America also called on Turkey to immediately release Osman Kavala pursuant to the judgment of the European Court of Human Rights.² This statement was heavily criticized by high-level state officials and institutions, including the Ministry of Foreign Affairs³, the Minister of Interior⁴ and the President of the Court of Cassation⁵.
7. President Erdoğan gave the harshest reaction and demanded that the ambassadors involved in the press statement be declared 'persona non grata'. In his statement on 21 October 2021, Erdoğan stated:

"Look, now the ECtHR has taken a decision. They almost want to condemn Turkey here regarding this Soros residue called Kavala. Why would 10 ambassadors make this statement? Those who defend this Soros residue are trying to get him released. I told our Minister of Foreign Affairs that we cannot afford to host them in our country."
8. In the same statement, the President also commented on the applicant and his wife Başak Demirtaş:

¹ <https://www.europarl.europa.eu/news/en/press-room/20211008IPR14532/rapporteur-for-turkey-attends-osman-kavala-s-trial-in-show-of-solidarity>

² <https://tr.usembassy.gov/tr/osman-kavalanin-dort-yildir-tutuklu-bulunmasina-iliskin-aciklama/>

³ https://twitter.com/TC_Disisleri/status/1450372445811191812

⁴ <https://t24.com.tr/haber/suleyman-soylu-biz-kendimizi-baskalarina-yonettirmeyiz-doviz-kurlarina-da-yonettirmeyiz-10-buyukelciye-de,988560>

⁵ <https://artigercek.com/haberler/yargitay-baskani-mehmet-akarca-dan-10-buyukelciye-tepki>

“As the AK Party and MHP, we hit the same target in the People's Alliance when it comes to the rights of our nation. But others do not hit the same target. They are acting together. What is it? He's been in prison for 4 years. It is whatever the judiciary says. Now the HDP is also trying to get Selahattin Demirtaş released. Look at this. This man is a terrorist... 53 of our citizens have died at the call of this [man] in Diyarbakır. You know how our dear Yasin Börü was martyred. While all this is happening, you see a television channel that features his wife, makes her talk, and she says ‘my children's father is [in prison]’. Your children's father might be [in prison], but Yasin Börü was martyred. Others were martyred in the same way. So they don't have children? What will happen to them? They never talk about it. They constantly criticize our stance on this issue. I'm sorry, as long as we have this duty, we are obliged to demand that whatever is required by the law. We cannot make any compromises here. These are the centers where terrorism feeds from. So is Selahattin Demirtaş. There are still pending cases. Kavala is exactly like that. But Kavala is different. Kavala is what Soros is to the international community. They are trying to shake wherever they want with money. Now Soros' son is also coming. He is like his father. They need to be followed very closely.”⁶

9. On 22 October 2021, while responding to the ambassador's press statement demanding Osman Kavala's release, the Minister of Interior Soylu stated:

“Ten ambassadors are making a statement that interferes with the law. What a reckless, indecent statement. Tomorrow they may ask us to remove Apo [Abdullah Öcalan] as well. They may want us to remove Selahattin Demirtaş as well. (...) We did not release Osman Kavala, we did not release Demirtaş. We did not receive any instructions from anyone in the fight against PKK and FETO. We think this decision is a political one.”⁷

10. On 23 October 2021, Erdoğan delivered another statement concerning the applicant, his wife and Kavala:

"So much so that they march together with terrorist organizations just to hinder us. They also stand next to the putschists, they also work together with the enemies of the country and the nation. They got together with the terrorist Selo. They also have no shame. Was it not Selo who killed Yasin Börü? Was it not Selo who got all the citizens out on the streets? Now they're trying to figure out how to get him out. It is whatever the judiciary says. You won't be able to get him out. Here Selo's wife is on the TV show. She says I'm sitting innocently with my children. Well, your children are innocent, but what about the children of our innocent citizens who were killed, who are under the ground right now, the family that Yasin Börü left behind? Are they not innocent? They are living innocently with their mothers right now. Where will you put them? If you are a mother, is Yasin's mother not one? On the other side of things, they are constantly saying Kavala, Kavala. Whom you call 'Kavala' is the Turkish branch of Soros. 10 ambassadors come to the Ministry of Foreign Affairs for him. What impudence is this? What do you think is this place? This is Turkey, Turkey. This is not a tribal state as you might think. This is Turkey, the glorious Turkey. You can't get up here and come to the Ministry of Foreign Affairs and give instructions. I gave the necessary instructions to our Minister of

⁶ <https://t24.com.tr/haber/erdogan-dan-10-buyukelciye-osman-kavala-tepkisi-bunlari-ulkemizde-agirlamak-gibi-bir-luksumuz-olamaz,987320>

⁷ <https://ilerihaber.org/icerik/soyludan-gri-liste-yorumu-kavalayi-serbest-birakmadik-demirtasi-serbest-birakmadik-131871.html>

Foreign Affairs. I told him what to do. I said, 'These 10 ambassadors, you will immediately deal with their being declared persona non grata'. Because they will get to know Turkey, they will understand, they will know, the day they do not know or understand, they will leave this country."⁸

11. On the same day, Mustafa Destici, the chairman of the Great Union Party (*Büyük Birlik Partisi*), called on the judiciary not to release the applicant and to have him sentenced as soon as possible:

"I condemn the efforts of the ambassadors of 10 countries in Turkey to interfere with the decisions of our judiciary by showing the arrogance of interfering in Turkey's internal affairs, and the impertinence to give instructions such as 'Release them immediately'. Selahattin Demirtaş, who was the co-chairman of the HDP which acts as the mouthpiece of the terrorist organization PKK to those who set up traps to turn the nation against one another, to enemies of the homeland, of the nation, and which is [PKK's] branch, and who is responsible for the martyrdom of our 37 citizens of Kurdish origin, 2 of whom were police officers, by provoking the nation during the 6-8 October events, will of course be in jail. Where else? Will he go on vacation in a 5-star hotel? Where will the man who said 'We will erect a statute of Apo [Abdullah Öcalan]' be? Will he be in a 7-star hotel? Will he freely walk around after provoking people, getting them on the streets and ordering the brutal murder of 37 people, stirring up the nation? Of course, he won't be walking around. Of course, the law and the judiciary will punish him. What is it that needs to be done here? These cases should be finalized and we should not play into the hands of Europe or those inside [the country]. Let the trial be completed as soon as possible, their sentences determined, so that no one can open their mouths. Neither inside nor outside. We want the law to act quickly, that these long periods of detention be over, and that the punishments be given. It has been 4-5 years. These trials shouldn't take this long. These punishments should be given as soon as possible."⁹

12. On 24 October 2021, İlnur Çevik, the Chief Advisor to the President, spoke to the BBC regarding the ECtHR decisions which were not implemented: *"Have there never been instances in the past where such countries ignored final judgments? I mean, I'm not saying it is legitimate or that's what we're doing, but other countries have also done similar things.*"¹⁰
13. On October 27, 2021, when asked about the possibility of the Committee of Ministers initiating infringement proceedings against Turkey, President Erdoğan said: *"We do as we know. Does the Council [of Europe] do as it knows, so be it. We will listen to and see what they do. We will listen to the ECtHR and the Council. After listening, we shall do our part. We will do whatever is necessary.*"¹¹

Resistance Against the Execution of ECtHR Judgments

14. The situation of the judiciary and the fact that the applicant and Kavala have not been released despite the ECtHR judgments and the Committee of Ministers decisions have also been heavily

⁸ <https://tr.sputniknews.com/20211023/erdogan--1050109331.html>

⁹ <https://artigercek.com/haberler/destici-selahattin-demirtas-elbette-hapiste-olacak>

¹⁰ <https://www.bbc.co.uk/sounds/play/w172xv5c54pd84v>

¹¹ <https://www.dw.com/tr/erdo%C4%9Fandan-kavala-a-%C3%A7%C4%B1klamas%C4%B1-%C3%BCzerimize-d%C3%BC%C5%9Feni-yapar%C4%B1z/a-59637528>

criticized in recent reports by Amnesty International¹² and the European Union¹³. Both reports have mentioned the increasing judicial harassment against dissidents, abuse of criminal laws, resistance against the implementation of ECtHR decisions and the absence of measures to protect the judiciary from interference by the executive, and have demanded Demirtaş's immediate release in line with the ECtHR judgment.

15. In this context, it should be noted that the judicial harassment against the applicant and the applicant's politically motivated detention continues. In the Rule 9.5 notification dated 28 October 2021, the Government stated that *"As can be seen in the said committal order, the applicant may be released on conditional date of release (şartlı tahliye) on 3 November 2021 and may be released on 3 January 2023 as foreseen date of release (bihakkın tahliye)"* and that the applicant was now convicted.
16. The case in which the applicant became convicted is the case regarding the upholding of the 4-year 8-months prison sentence given to the applicant for his speech delivered in 2013 (referred as the 'second set of proceedings' by the Secretariat of the Committee). As is known, this case was examined by the Committee of Ministers at the session dated 14-16 September 2021 and the Committee *"called, therefore, for the applicant's immediate release, the quashing of his conviction by the Istanbul Assize Court, and termination of the criminal proceedings pending before the 22nd Ankara Assize Court, together with the removal of all other negative consequences of the constitutional amendment."*
17. Regarding the 4-year 8-months of prison sentence given by the Istanbul 26th High Criminal Court and finalized by the Court of Cassation:
 - This sentence was directly executed in the period between 7 December 2018 (when the Court of Appeal upheld the 4-year 8-months prison sentence given by the Istanbul 26th Assize Court) until 31 October 2019.
 - The period of detention (his first detention) between 4 November 2016 and 7 December 2018 was deducted from this sentence.
 - The execution of the same sentence resumed on 3 May 2021 and is still continuing.
18. Pursuant to the regime concerning the execution of sentences in Turkey and calculated based on the applicant's 4-year 8-month prison sentence, the duration required for the applicant's probation is 30 months. The time required for the applicant to spend in prison for his conditional release is 42 months.
19. The applicant applied for probation on 15 July 2021, and this application was rejected on 19 October 2021.
20. Addressing the applicant's conditional release, the Prison Administration and Monitoring Board made the following justification in its decision dated 2 November 2021:

"(...) In all the programs that the convict Selahattin Demirtaş participated during his sentence, and in all the interviews he attended, it was observed that he did not make any submissions regarding his regret for the crime he committed and his intention not to commit a crime again, and our Board did not observe any sense of remorse in the convict for the

¹² <https://www.amnesty.org.tr/icerik/turkiye-4-yargi-paketi-yargi-sistemindeki-derin-kusurlari-gidermekte-yetersiz-kaliyor1>

¹³ https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en

crime has committed. In addition, it was observed that, after the date of 17/03/2013, when the convict committed the crime of propaganda for a terrorist organization for which he is serving the prison sentence, arrest warrants were issued for the execution of [sentences] regarding the crimes of Destroying the Unity and Integrity of the State, Inciting to Attempt to Kill for the Purpose of Concealing a Crime or Concealing the Evidence of Another Crime or Not Getting Caught, Inciting the Deprivation of Liberty for Numerous People alleged to have been committed in 2014. At this stage, in the light of the available data, it has been concluded that the risk of re-offending or harming others is not low.”

21. The two cases cited by the Observation Board to argue that the applicant did not show good conduct and that he should thus not be released, are the cases regarding the 4-year 8-months prison sentence upheld by the Court of Cassation and the ongoing case concerning his second detention before the Ankara 22nd Assize Court. Both these cases were found to be a violation of the applicant's rights guaranteed under the Convention. The fact the applicant is not being released under this reasoning -in spite of the ECtHR judgment and decisions of the Committee of Ministers explicitly calling for the applicant's release- is a continuation of the violation decision rendered under Article 18 of the Convention.
22. Despite the ECtHR judgment and the decisions of the Committee of Ministers, and the fact that the conditions sought in the law for the applicant's release have been met, the applicant still has not benefited from the possibilities offered by the penal system. On 3 November 2021, he was deemed to have served his entire prison sentence of 4 years and 8 months. An application was submitted to deduct the second detention period between 31 October 2019 and 3 May 2021 from this prison sentence.
23. As can be seen, the applicant has not benefited from probation or conditional release in the execution of the 4-year 8-months prison sentence. The applicant was given this sentence in an attempt to undermine and not implement the ECtHR judgment. As of 4 November 2021, the applicant has been in prison for exactly five years.
24. We kindly bring the developments to your attention and repeat our requests that we have included in our previous submissions.

Sincerely,

Legal representatives of the Applicant

Att. Benan Molu

Att. Ramazan Demir

Att. Mahsuni Karaman