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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

The honouring of obligations and commitments by Türkiye

Revised information note following the fact-finding visit (12-13 January 2023)

Co-rapporteurs: Mr John Howell, United Kingdom, European Conservatives Group and Democratic Alliance and Mr Boriss Cilevičs, Latvia, Socialists, Democrats and Greens Group

1. Introduction

1. On 12 October 2022, the Parliamentary Assembly adopted [Resolution 2459 \(2022\)](#) on The honouring of obligations and commitments by Türkiye². The Assembly notably reiterated its call on Türkiye to implement all judgments of the European Court of Human Rights, and, in light of two rulings adopted by the European Court of Human Rights (ECtHR) in December 2019 and July 2022, to release Osman Kavala, a philanthropist detained since 2017, and sentenced on 25 April 2022 to an aggravated life sentence.

2. On the same day, we informed the Monitoring Committee of our intention to visit Mr Kavala; the Committee authorised us to pay a visit to the country. Further to our contacts with the Turkish delegation to PACE, the Turkish authorities approved our request and allowed us to visit Mr Kavala, which was unprecedented for our Assembly.³

3. Our visit took place on 12-13 January 2023. The draft programme is enclosed (see Appendix I), as well as the statement issued at the end of our visit (see Appendix II). We would like to thank the authorities for assisting in the preparation of this visit, in particular Mr Ahmet Yıldız, Chairperson of the Turkish delegation to PACE, for his good offices and efforts to facilitate the meeting with Mr Kavala. The organisation of this visit was undertaken in consultation with PACE President Tiny Kox, whom we thank for his contacts with Mr Yıldız.

4. During our visit, we met the deputy ministers of foreign affairs and justice, respectively Mr Kaymakçı and Mr Moğul, as well as the vice-chair of the Equality and Human Rights Institution. We had very fruitful meetings with Mr Kavala's lawyer Professor Bayraktar, and Mr Kavala's wife, Ms Ayşe Buğra. We were in contact with Professor Philip Leach and Ms Başak Çalı, who are representing Mr Kavala at the European Court of Human Rights. We were also grateful for the Turkish delegation to PACE for meeting us and giving us the possibility to exchange with members of the majority and the opposition.

¹ Document declassified by the Monitoring Committee at its meeting on 24 January 2023.

² See [Doc 15618](#) and [Doc 15618 Add](#)

³ In 2019, the Commissioner for Human Rights Ms Mijatović visited Mr Kavala.

2. Background information: updated information about the domestic procedure and the infringement procedure

5. In our October 2022 report and its addendum, we described the infringement procedure launched by the Committee of Ministers in February 2022. Since then, the Committee of Ministers has been in regular contact with the Turkish authorities. The latter provided for example, at the request of the CM, information about domestic procedures (average time of consideration of cases submitted to the regional court of appeal, Court of Cassation and Constitutional Court).

6. At their meeting on 19-20 October 2022, the Deputies decided to appoint a Liaison Group of Ambassadors to assist the Chair in engaging with the Turkish authorities regarding the implementation of the judgment in this case, and in following up on that decision. This group is composed of the Permanent Representatives to the Council of Europe of the Czech Republic, Ireland, North Macedonia and Switzerland. We had the opportunity of having a fruitful exchange of views with the Ambassadors of these countries in Ankara, whom we thank for their availability.

7. In December 2022, the Committee of Ministers called upon all member States, the Secretary General as well as other relevant Council of Europe bodies and Observer States to intensify their high-level contacts with Türkiye to raise this case, while “stressing, in this respect, that it is the shared responsibility of all competent authorities, including the judiciary, to achieve *restitutio in integrum*”. It thus urged the competent Turkish authorities “to eliminate all the negative consequences of the criminal charges brought against the applicant, in particular by ensuring that he is immediately released” ([Decision](#) of the Deputies of 6-8 December 2022).

8. Our visit took place two weeks after the decision of the appellate court : on 28 December 2022, the 3rd Criminal Chamber of the İstanbul Regional Appeal Court upheld the sentences handed down by the İstanbul 13th High Criminal Court to Osman Kavala and his seven co-defendants - Mücella Yapıcı, Can Atalay, Tayfun Kahraman, Çiğdem Mater, Ali Hakan Altınay (former Director of the Council of Europe School of Political Studies), Mine Özerden and Yiğit Ali Ekmekçi - on charges of “attempting to overthrow the government” and assisting in “attempting to overthrow the government” in the Gezi Trial. This unanimous decision of the appellate court upholding Mr Kavala’s aggravated life sentence – which blatantly ignored the ECtHR rulings - and his seven co-defendants’ 18 years of prison was a matter of deep concern for us.

9. The appellate court judgment held that Mr Kavala’s conviction and sentence to aggravated life imprisonment was in accordance with all procedural and substantive laws and was based on relevant and sufficient evidence. Mr Kavala’s lawyers assessed that this judgment – which devoted only a few lines to the substance of the case - “neither provided any legal reasoning as to why Mr Kavala’s conviction was held to be in accordance with procedural and substantive laws, nor did it set out what concrete evidence was considered sufficient to convict Mr Kavala and sentence him to aggravated life imprisonment for the crime of attempting to overthrow the government”. In addition, his lawyers went on to say that this unreasoned judgment “does not make a single reference to the fact that Mr Kavala’s case has been subject to infringement proceedings; it manifestly contravenes the ECtHR judgment which clearly held that the Mr Kavala’s conviction on 25 April 2022 violated Article 46 of the Convention, and openly and egregiously defies the constitutional obligation to execute the judgments of the European Court of Human Rights”.⁴

10. We discussed the case with the vice-ministers of justice and foreign affairs. We were provided with contextual information about the 2013 Gezi protests and the 2016 failed coup d’état. As in previous meetings, the vice-ministers underlined, that Türkiye was among the states with the best rate of implementation of ECtHR judgements and that the Kavala case should not be singled out. They stressed that the case was still pending at the Constitutional Court and at the Court of Cassation and that there was a continuous dialogue with the Committee of Ministers. We also had signals that the situation was likely to evolve after the elections, with new reforms expected to be implemented.

11. We reassured the authorities that our intention was not to single out Mr Kavala’s case. However, we had to say that Mr Kavala’s case is indeed singular, with a legal dimension (highlighted by the Strasbourg Court rulings), but also a political dimension triggered by the violation of article 18 of the Convention taken in conjunction with Article 5 § 1, followed by a violation of Article 46 § 1 in the infringement proceedings.

12. Mr Kavala’s lawyers informed us about the latest developments in a case they described as hard to follow and unprecedented, with over 20 judges involved in the case since 2017. They highlighted that their request for a hearing at the regional court of appeal had not been accepted, thus preventing them from

⁴ Professor Philip Leach and Başak Çalı.

presenting their defense orally. They informed us that they would lodge an appeal to the Court of Cassation the following week and again request a hearing. They also introduced, on 9 June 2022, a (third) individual application to the Constitutional Court to challenge Mr Kavala's detention, which was still pending. They recalled that the two previous ones had been turned down by a 7 to 8 vote. His lawyers pointed out that Mr Kavala has been in detention since November 2017, which they said was beyond the 5-year time limit prescribed in the criminal code of procedure. They intended to challenge the concept of "detention pending appeal" (hüküm özlü) used by the Turkish courts in this case (which they considered as a novelty in Turkish law). Further to consultation, we understand that this period is considered, in the ECtHR case-law, as a detention after a conviction by a competent court (within the meaning of article 5.1 (a) of the Convention, ie lawful detention of a person after conviction by a competent court). Nevertheless, we consider that unless convicted, Mr Kavala should be presumed innocent and be released.

13. We understood that it would be difficult to predict when both the Constitutional Court and the Court of Cassation would examine the pending files. As the applicant is being detained, these files should be dealt with in a priority manner. Indicatively, we were told that the Court of Cassation could possibly examine the file within a year (while the usual period needed was three to four years). We can only encourage the judicial authorities to swiftly examine the pending files and look into legal solutions, keeping in mind that Mr Kavala has been deprived of his liberty for over five years, despite two binding rulings of the European Court of Human Rights calling for his release.

14. Our visit took place at a time when the upcoming presidential and parliamentary elections heavily dominated the agenda. These elections will be highly disputed as competitors from the opposition are facing difficulties, as illustrated by three lawsuits recently launched against the Istanbul Mayor Ekrem İmamoğlu (facing a political ban) or the pending party closure case targeting the HDP, and the temporary freezing of its treasury aid decided by the Constitutional Court on 2 January 2023, which we discussed with the Vice-chair of the HDP parliamentary group Mr Oluc.

3. Visit to Mr Osman Kavala at the Marmara (former Silivri) prison

15. On Friday 13 January 2023, we visited the Marmara (former Silivri) prison, where we were welcomed by the director of the prison block Mr Ali Demirtaş who provided us with information about the prison facility. We were well received by the prison staff and the director, and our visit had been well prepared. There was no time restriction. We met Mr Kavala in a visiting room, with prison officers standing in a nearby room. Mr Kavala confirmed the information we had already received in May from his lawyers, namely that his detention conditions were satisfactory, adding that he felt safe.

16. It was an important opportunity to meet Mr Kavala, who described the judicial developments since his arrest in 2017 and the many and complex developments of his legal case. He mentioned in this context the evolution and issues about the functioning of the judicial system, especially after the failed coup and the replacement of judges and prosecutors. We were impressed by Mr Kavala's great sense of humanity and lack of resentment about the way he had been treated and his detention.

17. Mr Kavala was well prepared, and his statement was very factual. His views of the future were optimistic, though realistic. He did not expect any change before the upcoming elections. At the same time, he expressed his strong conviction that the place of Türkiye is within the Council of Europe. However, Türkiye should be made accountable for these human rights violations, and he regretted the damaging effects on Türkiye's reputation, and above all on its citizens. He was confident that many Turkish people, including officials, are inclined to find a solution to his case.

18. Mr Kavala was also well informed about the infringement procedure and the latest decisions taken by the Committee of Ministers' Deputies. He wondered, however, how member States could push for action to convince the Turkish authorities to act in compliance with international law, which is to the benefit of the well-being of all people, and how they could help Türkiye move towards the rule of law and democracy.

19. Mr Kavala appreciated the attention paid by the Parliamentary Assembly and the interest shown in his case which he felt was important for all friends of Türkiye striving to strengthen human rights in the country. We assured Mr Kavala of our strong commitment and support to finding a solution for his release, and our determination to continue to closely follow his case, along with the Committee of Ministers, which is primarily responsible for the execution of judgements.

4. Concluding remarks

20. We reiterate our thanks to the Turkish authorities for facilitating this meeting with Osman Kavala, which is a gesture of good will indicative of a more forthcoming attitude. We appreciate this and confirm our readiness to continue a constructive dialogue. However, this visit is no substitute for the release of Mr Kavala. We remain firmly convinced that Mr Kavala should be released. As his conviction is not final and he is still presumed innocent under Turkish law, this release can and should take place without delay.

21. We assured all our interlocutors that we fully recognise the contribution of Türkiye to the Council of Europe, of which it is one of its first members. However, our Organisation should remain committed to its values and to safeguarding our system of human rights protection, which Türkiye contributed to establish. It should take the necessary steps to ensure the implementation of the ECtHR's rulings, which are the cornerstone of the Council of Europe's human rights system.

22. Almost one year ago, the Committee of Ministers took the difficult decision to launch the infringement procedure. As members of the Parliamentary Assembly, we fully support the efforts of the Committee of Ministers to find a solution. It is in everyone's best interest to ensure that Türkiye fully and unconditionally abides by its obligations and demonstrates its loyalty to the Convention system. This is particularly so in respect to the Turkish people.

23. We are fully aware that the case of Mr Kavala is just one among many others that deserve our attention. It is not the only case, but it has become the most visible one given the 2019 and 2022 rulings of the ECtHR which found a violation of articles 18 and 46 of the Convention⁵. In the first place, the conviction and detention of his seven co-defendants, which are interlinked with Mr Kavala's conviction, is highly problematic. We therefore hope that a swift resolution of Mr Kavala's case and his release would also pave the way for a legal solution for the cases of his co-defendants, but also for many other cases where rights violations have been established.

24. We stand ready to continue the dialogue with the authorities and we take note of their willingness to engage with us. Meeting Mr Kavala was in this respect important, and hopefully a useful step towards a full resolution of the issue, meaning the unconditional release of Mr Kavala. As politicians, we understand the sensitivity of the case, which has become symbolic, particularly ahead of the elections. It is however important to keep the elections issue separate from that of Mr Kavala's release. While the resolution of Mr Kavala's case lies in the hands of the judiciary, we also expect the Council of Europe and the Turkish authorities to continue to work together on the issue in a credible fashion.

⁵ In [December 2022](#), the Deputies recalled that “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”.

APPENDIX I Programme of the visit

Co-rapporteurs: Mr John HOWELL (United Kingdom, EC/DA) and Mr Boriss CILEVIČS (Latvia, SOC)
 Secretariat: Ms Sylvie AFFHOLDER, Secretary of PACE Monitoring Committee

Focus of the visit: Implementation of the rulings of the European Court of Human Rights with respect to Mr Osman Kavala

(*) Meetings organised by the Secretariat of the Council of Europe

Thursday 12 January 2023 in Ankara

- 08.30-10.00 Working breakfast with representatives of the Liaison Group:
 H.E Mr Pavel VACEK, Ambassador of the Czech Republic
 H.E Ms Sonya McGUINNESS, Ambassador of Ireland
 H.E Mr Jean-Daniel RUCH, Ambassador of Switzerland
as well as
 H.E Mr Peteris VAIVARS, Ambassador of Latvia
 Mr Benjamin COOPER, Political Officer, British Embassy Ankara
- 10.30-11.15 Mr Faruk KAYMAKÇI, Deputy Minister of Foreign Affairs
- 11.30-12.15 Ms Nimet ÖZKAYA SEVİM, Vice-Chairperson of the Human Rights and Equality Institution
- 12.30-14.00 Lunch hosted by Mr Ahmet YILDIZ, Chairperson of the Turkish Delegation to PACE, with the participation of delegation members Mr Ahmet Ünal ÇEVİKÖZ (CHP), Mr Mehmet Mehdi EKER (AK Party), Mr Ahmet Haluk KOÇ (CHP), Mr Halil ÖZŞAVLI (AK Party), Mr Zeki Hakan SIDALI (IYI Party) and Ms Zeynep YILDIZ (AK Party).
- 14.30-15.15 Mr Yakup MOĞUL, Deputy Minister of Justice
- 15.30-16.00 Mr Saruhan OLUC, Vice-Chairperson of the HDP parliamentary faction

Friday 13 January 2023 in Istanbul

- 08.30 Ms Ayşe BUĞRA, wife of Mr Kavala (*)
- 10.00 Dr Köksal BAYRAKTAR, Mr Kavala's lawyer (*)
- 14.00 Arrival at Marmara (former Silivri) prison and welcome by Mr Ali DEMİRTAŞ, Director of the prison
- 14.30 Meeting with Mr Osman KAVALA
- 16.00 End of the visit

APPENDIX II Statement by the co-rapporteurs

13/01/2023 **PACE monitors for Türkiye meet Osman Kavala**

Following a meeting with Osman Kavala at the Silivri prison today, the PACE rapporteurs for the monitoring of Türkiye, John Howell (United Kingdom, EC/DA) and Boriss Cilevičs (Latvia, SOC), have again called on the Turkish authorities to implement the judgments of the European Court of Human Rights, and to continue their high-level dialogue with the Council of Europe.

"The opportunity we had to meet Mr Kavala, who remains in prison since 2017 despite two ECHR rulings, is an important step forward in the dialogue between the Council of Europe and the Turkish authorities. It needs to lead towards the implementation of Strasbourg Court rulings – which is a clear obligation under the Human Rights Convention – and Mr Kavala's release. We thank the Turkish delegation to PACE and the authorities for facilitating this meeting.

We assured Mr Kavala of our strong commitment and support to finding a solution for his release, and our determination to continue to closely follow his case, along with the Committee of Ministers, which is primarily responsible for the execution of judgements. Mr Kavala appreciated our visit. In his view, the interest in his case is an important point for all friends of Türkiye striving to strengthen human rights in the country.

Both the authorities and Mr Kavala's lawyers informed us of the pending legal procedures at the Constitutional Court and the Court of Cassation concerning Mr Kavala, after the appellate court upheld his aggravated life sentence in December 2022 - a matter of deep concern for us.

We invite the Turkish authorities to continue to engage in and pursue their high-level dialogue with the Council of Europe, including through parliamentary channels, and to play their part in safeguarding our common system of human rights protection which Türkiye, as a founding member of the Organisation, helped to establish."