

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 15/02/2021

DH-DD(2021)187

Document distributed under the sole responsibility of its author, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1398th meeting (March 2021) (DH)

Communication from an NGO (İfade Özgürlüğü Derneği (IFOD)) (08/02/2021) in the case of Kavala v. Turkey (Application No. 28749/18).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

Document distribué sous la seule responsabilité de son auteur, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1398^e réunion (mars 2021) (DH)

Communication d'une ONG (İfade Özgürlüğü Derneği (IFOD)) (08/02/2021) concernant l'affaire Kavala c. Turquie (Requête n° 28749/18) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



DGI

08 FEV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

RULE 9.2 COMMUNICATION

in the Case of Kavala v. Turkey (Application No. 28749/18)

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

08 February 2021



DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE

08.02.2021

Rule 9.2 Communication from Freedom of Expression Association (İFÖD) (in the Case of Kavala v. Turkey (Application No. 28749/18))

1. The submission is prepared by **İfade Özgürlüğü Derneği** (İFÖD – Freedom of Expression Association), a non-profit and non-governmental organization which aims to protect and foster the right to freedom of opinion and expression in Turkey. The aim of this submission is to update the Committee of Ministers concerning the persistent failure of Turkish authorities in full and effective implementation general measures in the case of **Osman Kavala v. Turkey** which concerns a violation of Article 5 § 1 (right to liberty and security), a violation of Article 5 § 4 and a violation of Article 18 of the European Convention on Human Rights (“the Convention”) taken in conjunction with Article 5 § 1 of the Convention.
2. In its previous three consecutive meetings (at the 1377bis meeting (DH), 1-3 September 2020; the 1383rd meeting (DH), 29 September-1 October 2020 and 1390th meeting, (DH), 1-3 December 2020), the Committee has adopted decisions stating that the information available to the Committee raised a strong presumption that the applicant’s ongoing detention is a continuation of the violations found by the European Court, and strongly urged the authorities to ensure his immediate release.
3. In its earlier communications, the government informed the Committee of Ministers about reasons for the non-application of the judgment. The Authorities submitted a new action plan on 19.01.2021 (DH-DD(2021)81), in addition to the arguments concerning individual measures it already raised in earlier communications claimed that the Turkish legal framework complies with the requirements of Article 5 § 1 of the Convention and relevant case-law of the Court with regards to pre-trial detention. The authorities mentioned in this regard some legal changes and the fact that Committee of Ministers decided to close the examination of the Demirel group of cases in 2016.¹ The authorities also claimed that as a result of some legal and constitutional changes the independence and impartiality of the judiciary has been enhanced. The authorities also mentioned some statements of the President and the Minister of Justice in this regard. Furthermore, the authorities claimed that the finding of the Court with regards to violation of Article 18 taken in conjunction with Article 5 § 1 of the Convention has an isolated nature as the Court has not particularly indicated that there is a systemic or structural problem with respect to independence of the judiciary.
4. The authorities particularly argued that references to the high-profile cases by the country’s authorities should not be construed as interference with the competence of the judiciary. They contended that the comments by any politician, including the President, on certain

¹ Final Resolution CM/ResDH (ResDH (2016)332.



topics cannot be characterised as an interference with the judiciary. Making reference to the judgment of the Court in the case of *Lesnik v. Slovakia*² the authorities argued that in a democratic society, individuals are entitled to comment on and criticise the administration of justice and the officials involved in it.³ Therefore, the Turkish authorities invited the Committee of Ministers not to expand its supervision of execution of the judgment finding violation of Article 18 taken in conjunction with Article 5 § 1 of the Convention to an extent to include the supervision of execution in respect of Article 6 of the Convention.

5. İFÖD already presented a submission on 18 June 2020⁴ and recommended individual and general measures that should be taken by the authorities. Reiterating its previous observations and recommendations with regards to individual and general measures, especially its observations about independence of the judiciary, İFÖD, in this submission, will focus on **two issues** claimed by the authorities: namely, the argument that Turkish legal framework complies with the requirements of the Court's case-law with regards to pre-trial detention and the argument that statements of politicians such as the President and ministers about high profile cases should not be construed as interference with the judiciary.

İFÖD's OBSERVATIONS

6. First of all, İFÖD would like to remind that although the Committee of Ministers, in its previous three consecutive meetings (at the 1377bis meeting (DH), 1-3 September 2020; the 1383rd meeting (DH), 29 September-1 October 2020 and 1390th meeting, (DH), 1-3 December 2020), strongly urged the Turkish authorities to ensure immediate release of Mr. Kavala indicating that the applicant's ongoing detention is a continuation of the violations found by the Court, **Mr. Kavala is still in detention**. Furthermore, the General Assembly of the Constitutional Court rejected Mr. Kavala's individual application with regards to his continuing detention and has not found violation of his constitutional rights on 29.12.2020.
7. On the other hand, the 3rd Criminal Chamber of the İstanbul Regional Court of Appeal quashed the acquittal decision of the İstanbul 30th Assize Court on 22.01.2021 in relation to the Gezi trial.⁵ Furthermore, the İstanbul 30th Assize Court issued an order of international travel ban as a judicial control measure for the eight defendants on 28.01.2021 in its preliminary proceedings report. The Court has not ordered any judicial control measure for Mr. Kavala considering that he is already in detention in relation to the charges involving articles 309 ("**attempting through force and violence to overthrow the constitutional order**") and 328 ("**political or military espionage**") of the Criminal Code that Mr. Kavala is facing at the **İstanbul 36th Assize Court** since this new indictment was accepted by the Court on 08.10.2020. The İstanbul 36th Assize Court, decided to join this case with the Gezi case on the hearing on 05.02.2021.⁶
8. The joined cases will be overseen by the **İstanbul 30th Assize Court** and the first hearing of the joined cases is set for **25.05.2021**.

² *Lesnik v. Slovakia*, no. 35640/97, 11.03.2003.

³ Turkish Government's Action Plan dated 19.01.2021, DH-DD(2021)81, para. 19.

⁴ İfade Özgürlüğü Derneği Rule 9 communication to the CoE Committee of Ministers in relation to the Osman Kavala v. Turkey case (Application No. 28749/18), 29.06.2020, DH-DD(2020)575 at <https://rm.coe.int/native/090000016809eded>.

⁵ File No. 2020/573, Decision No.2021/54, 22.01.2021.

⁶ İFÖD already provided detailed information about the espionage case and its relevance with the Gezi case in its previous Rule 9.2 submission on the Osman Kavala v. Turkey case.



Observations with Regards to Legal Framework of Pre-trial Detentions in Turkey

9. As mentioned above, the Turkish authorities claimed in their recent action plan that Turkish legal framework complies with the requirements of Article 5 § 1 of the Convention and relevant case-law of the Court with regards to pre-trial detention. İFÖD would like to emphasize that one of the major human rights problems in Turkey is widespread, premature, and unjustified arrests and detention orders. Notwithstanding legislative amendments, the situation in practice worsened significantly in recent years, especially during the state of public emergency between 2016 and 2018 and afterwards.

10. The Commissioner for Human Rights of the Council of Europe stated in her recent country visit report that:

“The use of detention in criminal proceedings and its effects on the enjoyment of human rights in Turkey has been a serious long-standing concern of the Commissioner’s Office. The findings of successive Commissioners show **a consistent pattern in the practice of the Turkish judiciary deviating from international and European human rights standards**, including premature arrests, insufficiently motivated initial pre-trial detention decisions, serious deficiencies in the review procedures concerning the continuation of detention, as well as the length of detention.

In this connection, the Commissioner wishes to highlight several problematic practices which continue to raise concerns despite several legislative amendments regarding the criminal procedure. These include (i) **the lack of restraint by prosecutors in initiating proceedings, including in unmeritorious cases**; (ii) **arrests of suspects occurring at a very early stage of the investigations, leading to long detentions before even their indictment**; (iii) **a long-established practice among Turkish prosecutors of going from arrest of suspected persons towards evidence, rather than collecting evidence to establish well-founded suspicions in the first place**; (iv) **defective reasoning of detention decisions, and particularly the automaticity of those extending detention**; (v) **failure to resort to alternatives to detention**; (vi) **long periods spent in detention amounting to “internment by remand”**.⁷

11. The Commissioner emphasized further that “the problem of insufficient reasoning based on stereotypical formulations seems to have become generalised for all lower criminal courts. Particularly in cases attracting political interest – or where the executive gives a clear signal as to the presumed guilt of the persons concerned – the Turkish courts appear to offer little resistance, even in cases where the material evidence available is clearly insufficient within the meaning of Article 5 of the ECHR.”⁸

12. Statistics of the European Court seems to confirm observations of the Commissioner. In 2020, the European Court found violation of Article 5 of the Convention by Turkey in 16 separate judgments.⁹ Similarly, the European Court also found during 2019 16 separate violations of Article 5 concerning Turkey, some of which relating to events that took place after the Committee of Ministers closed the assessment of Demirel Group of Cases.¹⁰ The

⁷ Dunja Mijatovic, Commissioner for Human Rights of the Council of Europe, Report Following her Visit to Turkey from 1 to 5 July 2019, paras. 51-52, at <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>

⁸ *Ibid*, para. 55.

⁹ See https://www.echr.coe.int/Documents/Stats_violation_2020_ENG.pdf

¹⁰ Final Resolution CM/ResDH(2016)332 <http://hudoc.exec.coe.int/eng?i=001-169016>



Court found violation of Article 5 in 787 cases in total by Turkey.¹¹ Generally, the Court has found too many violations of Article 5 § 1 on the ground of unlawfulness of detention either in view of lack of reasonable suspicion¹² or because of arbitrary breach of legal guarantees such as special procedures for judges by the Turkish judicial authorities during the last few years.¹³

13. The increase in the number of detainees in recent years also confirms the observations of the Commissioner.¹⁴ Prison population as of October 2020 was 260.876, although at least 100.000 people were released as part of the Coronavirus pandemic precautions.¹⁵ Existing population is still 7.5% above the official capacity. Although the percentage of detainees to convicts changes considerably year by year, 20-25% of inmates consist of detainees.
14. Moreover, even the Minister of Justice complains about the tendency of Turkish judiciary to order detention of suspects whose detention is not necessary.¹⁶ Therefore, İFÖD would like to present to the attention of the Committee that **use of detention in Turkish criminal justice system clearly contradicts with the Convention standards** and there is certainly room for improvement. So, İFÖD believes that the Committee should continue to supervise compliance of Turkish judicial practice with respect to pre-trial detention with the Convention standards.

Observations with Regards to the Statements of Politicians as an Interference with the Judiciary

15. The authorities claimed, in their recent action plan, that finding of the Court with regards to violation of Article 18 taken in conjunction with Article 5 § 1 of the Convention has an isolated nature as the Court has not particularly indicated that there is a systemic or structural problem with respect to independence of the judiciary. They particularly argued that comments by any politicians, including the President, on certain cases cannot be construed as an interference with the judiciary. Therefore, the Turkish authorities invited the Committee of Ministers not to expand its supervision of execution of the judgment finding violation of Article 18 taken in conjunction with Article 5 § 1 of the Convention to an extent to include the supervision of execution in respect of Article 6 of the Convention.
16. İFÖD would like to emphasize that the Court's findings in relation to the violation of Article 18 taken in conjunction with Article 5 § 1 of the Convention with reference to the statements of the President about the guilt of the applicant was not related to presumption of innocence. The European Court made those references to show political motivation of the arrest and detention of the applicant. However, this does not mean that such statements of high level public official cannot violate the right to presumption of innocence of the concerned people. According to the Court's case-law, presumption of innocence is not limited to a simple

¹¹ See https://www.echr.coe.int/Documents/Stats_violation_1959_2020_ENG.pdf

¹² See, for example, *Şahin Alpay v. Turkey*, no. 16538/17, 20.03. 2018; *Mehmet Hasan Altan v. Turkey*, no. 13237/17, 20.03.2018; *Sabuncu and Others v. Turkey*, no. 23199/17, 20.11.2020; *Şık v. Turkey* (no 2), no. 36493/17, 24.11.2020; *Atilla Taş v. Turkey*, no. 72/17, 19.01.2021.

¹³ *Alparslan Altan v. Turkey*, no. 12778/17, 16.04.2019; *Selahattin Demirtaş v. Turkey* (no.2) (GC), no. 14305/17, 22.12.2020

¹⁴ See <https://www.dogrulukpayi.com/bulten/cezaevinde-bulunanlarin-sayisi-artmaya-devam-ediyor>

¹⁵ See <https://www.milliyet.com.tr/gundem/cezaevlerinde-260-bin-tutuklu-ve-hukumli-var-6341706>

¹⁶ See <https://www.haberturk.com/son-dakika-adalet-bakani-gul-den-tutuksuz-yargilama-aciklamasi-haberler-2868201>



procedural guarantee in criminal matters. Its scope is wider and requires that no representative of the State or of a public authority declare that a person is guilty of an offense before his guilt has been established by a “court”.¹⁷ However, a distinction should be made between decisions or statements which reflect the feeling that the person concerned is guilty and those which merely describe a state of suspicion. The former violates the presumption of innocence, while the latter have on several occasions been considered to comply with the spirit of Article 6 of the Convention.¹⁸

17. So, statements of public authorities declaring a person guilty, before his/her guilt has been established by a court would violate the right of the person concerned to presumption of innocence. However, if such a statement also leads to detention of a person, then this is likely to show political motivation and unlawfulness of the detention. There are numerous examples that following the statement of the President of Turkey declaring a person guilty, that person would be investigated and prosecuted as well as arrested and detained in some cases.
18. As a matter of fact, the Grand Chamber in its Selahattin Demirtaş (no. 2) decision clearly referred to the statements of the President and the subsequent judicial or prosecutorial moves in order to establish that detention of the applicant pursued a political goal.¹⁹ The Court indicated that after the termination of the “solution process” and the speeches by the President, who had, for example, said on 28.07.2015 that “*the leaders of that party [the HDP] must pay the price*”, there was an increase in the number and pace of the criminal investigations in respect of Selahattin Demirtaş. The Court also referred to the statements of the President and re-arrest of Mr. Demirtaş subject to a new investigation in relation with the events of 6-8 October 2014 which were also relied on by the judge who ordered the first detention of Mr. Demirtaş and which were already examined by the European Court in relation to the return of the applicant to the pre-trial detention. The President accused Demirtaş of being the “killer” of fifty-three people. He also said that he was following the matter and that the two HDP co-chairs could not be “let go off”. The Court, considering the close temporal link between the applicant’s return to pretrial detention and the speech given by the President immediately afterwards, ruled that the domestic authorities do not appear to be particularly interested in the applicant’s suspected involvement in an offence allegedly committed between 6 and 8 October 2014, some five years previously, but rather in keeping him detained, thereby preventing him from carrying out his political activities.²⁰
19. Similarly, President Erdoğan, on a regular basis accused the HDP for the incidents and escalation of violence between 7 June and 1 November 2015 elections, framing them as collaborators of terrorism. On 28.07.2015, President Erdoğan stated that he does not approve closing down political parties, but also added that “*deputies of the Peoples’ Democratic Party (HDP) should pay the price one by one. The parliament should do what is needed and remove their parliamentary immunity shields. If people collaborate with a*

¹⁷ *Viorel Burzo v. Romania*, nos.75109/01 and 12639/02, § 156, 30.06.2009; *Moulet v. France* (dec.), No 27521/04, 13.09.2007.;

¹⁸ *Marziano v. Italy*, no 45313/99, § 31, 28.11.2002.

¹⁹ *Selahattin Demirtaş v. Turkey (no.2)* (GC), no. 14305/17, 22.12.2020, paras.426 et al.

²⁰ *Ibid*, paras. 432-433.



terrorist organization, they pay the price".²¹ Subsequent to such statements, the number of preliminary investigation files prepared by the prosecutors and transmitted to the Parliament against members of HDP increased exponentially in 2015 and 2016.

20. On 02.01.2016, President Erdoğan stated that *'HDP MPs should go to prison.'*²² Between 15 December 2015 and May 2016, the number of preliminary investigation files against HDP MPs before the Parliament almost tripled, reaching 510 files by May 2016. In fact, public prosecutors sent far too many new files to the Parliament against HDP members and the number of cases which was sent in the last one month between April and May 2016, reached to 154 before the provisional constitutional amendment which provisionally lifted the parliamentary immunities entered into the force. Accordingly, those HDP MPs were prosecuted and some of them were also detained.
21. President Erdoğan's political statements also interfered with the criminal prosecution and the pre-trial detention of Can Dündar, the chief editor of Cumhuriyet newspaper, and Erdem Gül, Ankara representative, after the newspaper published footage on 29.05.2015 claiming that the national intelligence organization, MIT sent weapons to Syrian Islamist fighters. Two days later, on 31.05.2015, President Erdoğan responded to the allegations explaining that MIT has been sending support to Turkmen population in Syria and stated that *"At the point of humanitarian aid, logistic support, our National Intelligence Organization provides this support to Bayır Bucak Turkmens. These slanders against the National Intelligence Organization are illegitimate operations and espionage activities. This newspaper was also involved in this espionage activity. Numbers were provided there. What is the source of these numbers? Where did you get these numbers from? From the Paralel State Structure. I instructed my lawyer about these and filed the case immediately. This is an operation for perception on behalf of someone"*, and also added that he thinks *"the individual who reported this as an exclusive story will pay a harsh price for it. I wouldn't leave him like that"*.²³ Following Erdoğan's statements and criminal complaint, Mr. Dündar and Mr. Gül were arrested on 26.10.2015. After 92 days in prison, Mr. Dündar and Mr. Gül were released on 26.02.2016 after the Constitutional Court ruled that their pre-trial detention was not lawful. Shortly thereafter, on 28.02.2016 President Erdoğan reacting to the release of the two and the judgement of the Constitutional Court stated that *"the Constitutional Court has made this decision, but I remain silent to the decision of the Constitutional Court, but I do not have to accept this decision. I do not comply with this decision; I do not respect it. This is not an acquittal decision, it is a release order"*.²⁴ Subsequently, on 11.03.2016, President Erdoğan reacted to the "speediness" of the proceedings before the Constitutional Court by stating that *"the first instance court could have resisted in its decision, let's resist; let's see what the Constitutional Court will do. If the first instance court had resisted its*

²¹ Statement by President Erdoğan, 28 July 2015, Ankara, available at http://www.cumhuriyet.com.tr/haber/turkiye/332325/Erdoğan_cozum_surecini_bitirdi_HDP_lilerin_dokunul_mazliginin_kaldirilmasini_istedi.html

²² Statement by President Erdoğan, 2 January 2016, on plane returning from his official visit to Saudi Arabia to Ankara, available at https://www.bbc.com/turkce/haberler/2016/01/160102_erdogan_hdp

²³ Statement by President Erdoğan, 31 May 2015, Ankara, available at <http://www.cumhuriyet.com.tr/haber/erdogandan-canli-yayinda-can-dundara-tehdit-288885>

²⁴ Statement by President Erdoğan, 28 February 2016, Ankara, available at <http://www.diken.com.tr/erdogan-dundar-ve-gulun-tahliyesine-ates-puskurdu-saygi-duymuyorum>



*decision, things would have developed differently*²⁵ and the President called out to the first instance court not to comply with the Constitutional Court's decision. On 06.05.2016, Can Dündar was sentenced to imprisonment for five years and 10 months for "leaking secret information of the state".

22. President Erdoğan's political statements also played a crucial role subsequent to the election of Dr. Canan Kaftancıoğlu as the CHP Istanbul Provincial Chair in early January 2018. On 14.01.2018 Sunday approximately one day after Dr. Kaftancıoğlu was elected as the CHP Istanbul Provincial Chair, the Istanbul Chief Public Prosecutor's Office issued verbal instructions to Istanbul Provincial Police Department to investigate Kaftancıoğlu's social media activities. On 15.01.2018, a criminal complaint was filed by President Erdogan through his attorneys to the Istanbul Chief Public Prosecutor's Office on the grounds that the crime of "insulting the president" was committed. President Erdoğan, in his speech at the party group meeting on 16.01.2018 read out some tweets of Dr. Kaftancıoğlu and stated among others that *"Kaftancıoğlu attacked the values of our country with Marxist terminology;" "Such a provincial president would suit a party led by a cartoon type character like Kemal Kılıçdaroğlu. And my friends, we are filing lawsuits for incitement to crime. How can she be a politician? They will pay the price for them"*.²⁶
23. Following these statements, Dr. Kaftancıoğlu was charged with "insulting the president" pursuant to the article 299 of the Turkish Criminal Code, "insulting a public official" pursuant to the article 125/3 of the Turkish Criminal Code "terrorist propaganda" pursuant to article 7/2 of the Anti-Terrorism Code, "denigrating the Turkish nation, the state and its organs" pursuant to article 301 of the Turkish Criminal Code, and "inciting public to hatred and hostility" pursuant to article 216/1 of the Turkish Criminal Code for several Twitter posts going back to approximately seven years. Kaftancıoğlu was convicted of five different charges and was sentenced to 9 years 8 months and 20 days imprisonment in total .²⁷
24. Another example involves the Academics for Peace (Barış için Akademisyenler, BAK) which is basically a group of academics who support a peaceful solution to the Kurdish-Turkish conflict. The BAK group signed a petition called "We will not be a party to this crime!" on 10.01.2016 which was signed by approximately 2.000 academicians and the statement was widely circulated. Following the petition, President Erdoğan responded to the signatories on several occasions. He referred to the academicians who signed the petition on 12.01.2016 as **"so-called intellectuals"**, and as **"shady"** and **"not intellectuals"**. Erdoğan explicitly stated that the academicians *"are too dark and ignorant to know neither the Southeast, nor the East, the address of these places. But we know those places very well, like the way and address of our own home... Today, too, we are faced with the betrayal of the so-called intellectuals, most of whom receive their salaries from the state and carry the*

²⁵ Statement by President Erdoğan, 11 March 2016, Burdur, available at http://www.cumhuriyet.com.tr/video/video_haber/496261/Erdogan_dan_Can_Dundar_ve_Erdem_Gul_icin_mahkemeye_direktif.html

²⁶ Statement by President Erdoğan, 16 January 2018, Ankara, available at <https://www.evrensel.net/haber/343395/erdogan-canan-kaftancioglu-yu-hedef-gosterdi>

²⁷ The verdict of the first instance court has been approved by appellate court (Istanbul Regional Court of Justice, 2nd Criminal Chamber) on 26.06.2020 and the case is pending before the Court of Cassation. <https://www.sozcu.com.tr/2020/gundem/son-dakika-canan-kaftancioglu-nun-cezasi-onandi-5891077/>



identity of this state in their pockets.”²⁸ Later on, over 1000 criminal investigations were launched against the signatories for propaganda of a terrorist organization pursuant to article 7/2 Anti-Terrorism Law and denigrating the Turkish nation, the state and its organs pursuant to article 301 of the Turkish Criminal Code.²⁹ 404 peace petitioners were also dismissed from public service, by State of Emergency decrees issued between 2016 and 2018. Following President Erdoğan’s statement on 15.03.2016 stating that “the academicians can be terrorists too,” three of the signatories were then taken into custody on 16.03.2016. Over 600 signatories were charged, and most of the trials ended in a verdict where the defendants were found guilty of the offences and sentenced them to prison sentences between 15 months and 3 years.³⁰

25. President Erdoğan continued to speak about Mr. Kavala after the European Court found a violation of Article 18 of the Convention in conjunction with Article 5. On 19.02.2020, President Erdoğan criticized the decision of the Istanbul 30th Assize Court publicly in a speech at a parliamentary group meeting of the Justice and Development Party. In his speech, the President blamed US philanthropist Soros for stirring up trouble behind the scenes to make some countries rise up. He also implied that Mr. Kavala was a branch of Soros in Turkey. The president also claimed that there was a manoeuvre to release Mr. Kavala, but this was prevented.³¹
26. Following Erdoğan’s statements and Mr. Kavala’s acquittal in the Gezi trial, he was once again detained by the Istanbul 8th Criminal Judgeship of Peace subject to the very same investigation he had been previously released on 11.10.2019.³²
27. More recently, President Erdoğan made a statement targeting Boğaziçi University Faculty Member, Emeritus Prof. Dr. Ayşe Buğra, Osman Kavala’s wife on 05.02.2021, the day of the second hearing on espionage and attempted coup charges pursuant to articles 328 and 309 of the Turkish Criminal Code. In early January 2021, the President Erdoğan appointed a new Rector to the Boğaziçi University, from outside the Boğaziçi University and the new Rector was a former AKP parliamentary candidate for the general elections in 2015. The appointment was not welcomed by the student body, faculty members and the alumni on the grounds that it was an attempt to curtail academic freedom. The students have been demonstrating against the appointment and demanded that the new rector resigns. The

²⁸ Statement by President Erdoğan, 12 January 2016, Ankara, available at https://www.bbc.com/turkce/haberler/2016/01/160111_erdogan_akademisyen_aciklama

²⁹ Up to date statistics are available at <https://docs.google.com/spreadsheets/d/e/2PACX-1vT05GTWUQMDot1iPfmSieJsWLGBoBorNIJyLP5IdtvJVEcKRw8C8qMxFXPighYZkz7pf2ENP2bXZ3DMo/pubhtml?gid=1873917137&chrome=false&widget=false>

³⁰ The Constitutional Court found violation of freedom of expression in *Zübeyde Füsün Üstel and others case* [GK], B. No: 2018/17635, 26/7/2019) for conviction on account of signing petition for peace. Later on, first instance courts issued acquittal decisions.

³¹ Bianet, “President Erdoğan on Gezi Trial: They Attempt to Acquit Him with a Maneuver”, <http://bianet.org/english/politics/220275-president-erdogan-on-gezi-trial-they-attempt-to-acquit-him-with-a-maneuver> 19.02.2020; Deutsche Welle, “Turkey investigates judges involved in Gezi Park trial acquittals”, <https://www.dw.com/en/turkey-investigates-judges-involved-in-gezi-park-trial-acquittals/a-52435248>, 19.02.2020; Duvar English, “Erdoğan deems Kavala acquittal as ‘an attempt,’ slams Gezi protests”, <https://www.duvarenglish.com/politics/2020/02/19/erdogan-deems-kavala-acquittal-as-an-attempt-slams-gezi-protests/>, 19.02.2020.

³² Developments following the judgment of European Court was explained in detail by İFÖD in its previous submission.



protests received widespread support among the public and some students were arrested and then detained.³³ President Erdoğan has been also critically commenting on the protests at Boğaziçi University and on 05.02.2021 by reference to the Boğaziçi University protests stated that *“the wife of the person who is the representative of Soros in this country called Osman Kavala is also a woman who is among these provocateurs at Boğaziçi University. So now are we going to say take our country and this precious university and cause disruption? We cannot allow this”*.³⁴

28. The examples are not limited to those mentioned here but these examples clearly show that declaring a person as guilty or targeting them with alleged crimes by high-ranking officials especially by the President often leads to criminal investigations and prosecutions and/or detention of such persons. So, these examples show that Kavala case is not an isolated case, and the finding of the Court of a violation of Article 18 in conjunction with Article 5 of the Convention has been followed by Grand Chamber’s Selahattin Demirtaş (2) judgment.

Conclusion and Recommendations

İFÖD urges the Committee of Ministers

1. To invite the government to provide statistical information about pre-trial detention orders issued in the last 5 years to examine whether a systemic problem persists after Committee’s decision to close the Cahit Demirel Group of Cases.
2. To continue to supervise the compliance of Turkish judicial practice with respect to pre-trial detention with the Convention standards.
3. To supervise whether the statements of high ranking officials declaring persons as guilty lead to unlawful and politically motivated detention of those persons.
4. To call the government officials to refrain from publicly commenting on political cases and blaming individuals prosecuted in those cases.

İFADE ÖZGÜRLÜĞÜ DERNEĞİ
Osmanağa Mah. Hasircıbaşı Cad.
No:24/4 Kadıköy/İSTANBUL
Kadıköy V.D. 4700644051
Kütük No: 34-235/076

İfade Özgürlüğü Derneği – İFÖD (Turkey) Web: <https://ifade.org.tr> Twitter:

İfade Özgürlüğü Derneği (“İFÖD”) has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.

³³ Al Monitor, Turkish students detained as Bogazici protests intensify, 1.2.2021, <https://www.al-monitor.com/pulse/originals/2021/02/turkey-students-detained-bogazici-melih-bulu-akp-kaaba-lgbt.html>

³⁴ Statement by President Erdoğan, 05 February 2021, Ankara, available at <https://t24.com.tr/video/prof-ayse-bugra-dan-kendisini-provokatorlukle-suclayan-erdogan-a-yanit-esefle-karsiliyorum,36100>