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Meeting: 1521st meeting (March 2025) (DH)

Communication from an NGO ("İFÖD" - Freedom of Expression Association) (10/02/2025) in the case of Kavala v. Türkiye (Application No. 28749/18).

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Réunion : 1521^e réunion (mars 2025) (DH)

Communication d'une ONG ("İFÖD" - Freedom of Expression Association) (10/02/2025) dans l'affaire Kavala c. Türkiye (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.



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SERVICE DE L'EXECUTION
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RULE 9.2 COMMUNICATION
in the Case of Kavala v. Türkiye (no. 28749/18)

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

11 February, 2025



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

I. Introduction

1. This submission is prepared by **İfade Özgürlüğü Derneği (İFÖD – Freedom of Expression Association)**, a non-profit and non-governmental organization dedicated to protecting and promoting the right to freedom of opinion and expression in Türkiye. The purpose of this submission is to provide the **Committee of Ministers** with an update on the **persistent failure of Turkish authorities to fully and effectively implement the general measures** required in the case of *Osman Kavala v. Türkiye*. This case concerns **violations of Article 5 § 1 (right to liberty and security), Article 5 § 4, and Article 18 of the European Convention on Human Rights (“the Convention”) in conjunction with Article 5 § 1.**
2. At its last five meetings (1483rd bis meeting (DH), 5-7 December 2023; 1486th meeting (H46-1), 17 January 2024; 1492nd meeting (DH), 12-14 March 2024; 1501st meeting (DH), 11-13 June 2024; and 1507th meeting (DH), 17-19 September 2024), the **Committee of Ministers** repeatedly **called on the Turkish authorities to immediately release the applicant** and urged the **Turkish Constitutional Court** to put an end to his ongoing detention as an **individual measure**. The Committee also **pressed the authorities to take all necessary legislative and other measures to ensure judicial independence**, particularly by **securing the structural independence of the Council of Judges and Prosecutors from the executive**.
3. In their communications with the Committee of Ministers, the **Turkish authorities emphasized the importance of high-level technical meetings**, suggesting these as a means to address concerns related to the implementation of the Court’s judgment.
4. **İFÖD** has previously submitted **three Rule 9 communications** in the case of *Kavala v. Türkiye*, (**18.06.2020, 08.02.2021, and 15.11.2021**). These submissions addressed the lack of evidence supporting the applicant’s conviction, the structural deficiencies affecting the independence of the judiciary in Türkiye, and the broad interpretation of Articles 309 and 312 of the Turkish Criminal Code. Additionally, they examined the legal framework governing the applicant’s pre-trial detention, the impact of political statements on judicial independence, and observations from the most recent hearings in the Gezi Trial. In the present submission, **İFÖD will focus on the systemic problem of non-implementation of the judgments of the European Court in Türkiye.**

II. Developments After the Court’s Kavala Judgment

5. Following the European Court’s judgment, which found multiple violations of Osman Kavala’s rights, Turkish authorities continued legal actions against him, relying on the same evidence



that had already been reviewed and dismissed by the Court. On **18.02.2020**, in what initially appeared to be compliance with the *ECtHR* ruling, **Kavala was acquitted of all charges** related to the **Gezi Park protests**, including the accusation of attempting to overthrow the government. As a result, the **İstanbul 30th Criminal Assize Court ordered his release from detention**. However, on the **same day**, Kavala was **immediately re-arrested** pursuant to a **new arrest warrant issued by the Istanbul Public Prosecutor's Office**. This warrant was based on an ongoing investigation alleging **his involvement in the July 2016 coup attempt**, with accusations linking him to U.S. academic Henry J. Barkey—a charge similarly lacking any credible evidence.

6. Subsequently, a new investigation was launched against Osman Kavala on charges of **military and political espionage**, leading to his continued detention. Notably, this new investigation was **based on the same evidence that had already been examined and dismissed by the ECtHR**. Despite the absence of any new or additional evidence, the **timing of the investigation—just before the expiration of the legal time limits for his initial detention related to the coup attempt—strongly indicates that it was initiated primarily to prolong his detention, rather than being grounded in credible legal justification**. In essence, the espionage charges merely repackaged the same **politically motivated conspiracy narrative** that the ECtHR had already evaluated and dismissed.
7. The espionage investigation was eventually **merged with the ongoing trial concerning the Gezi Park protests**. While Kavala was later acquitted of espionage charges, the İstanbul 13th Criminal Assize Court **proceeded to convict him on charges related to the Gezi protests**. On **25.04.2022**, Kavala was sentenced to **aggravated life imprisonment** on charges of **attempting to overthrow the Government** (under article 312 of the Turkish Criminal Code) for his alleged role in the **2013 Gezi Park protests**. This conviction was **once again based on the same evidence that the ECtHR had already deemed politically motivated and insufficient**.
8. In the *Kavala v. Türkiye* (Proceedings under Article 46 §4) judgment, delivered on **11.07.2022**, the **Grand Chamber found that Türkiye had violated Article 46 §1** by failing to implement the Court's ruling. However, despite this finding in the **infringement proceedings**, on **28.09.2023**, the **Court of Cassation upheld Kavala's conviction and sentence, rendering it final**. The **persistent lack of new evidence** in both the espionage and Gezi Park cases **further reinforces the perception that Kavala's detention and prosecution are politically driven**, with the **Turkish judiciary continuing to disregard the ECtHR's binding judgments**.
9. It is therefore crucial to assess the impact of these judgments on the fairness and integrity of the trial in domestic courts, particularly in light of **their persistent disregard for the European Court of Human Rights' binding rulings**. The **failure of Turkish judicial authorities to align their decisions with the ECtHR's findings not only undermines the applicant's right to a fair trial** but also raises **serious concerns regarding the rule of law and judicial independence in Türkiye**.

III. The Disregard of the ECtHR Judgments by the Domestic Courts

10. Pursuant to Article 46 §1 of the Convention, High Contracting Parties are legally bound to comply with the final judgments of the Court in any case to which they are parties. The Court



has consistently underscored that the **effective functioning of the Convention system is predicated on the fundamental principle of good faith compliance by public authorities in Contracting States.** Accordingly, **state authorities are required to implement the Court's judgments not only in strict adherence to their conclusions but also in a manner that upholds their underlying spirit and purpose.** Failure to do so not only undermines the binding nature of the Court's rulings but also threatens the broader principles of rule of law and human rights protection within the Convention framework.

11. As reaffirmed in the *Yüksel Yalçinkaya* judgment ([GC], no. 15669/20, § 418, 26.09.2023), Article 46 of the Convention holds constitutional authority in Türkiye under Article 90 § 5 of the Turkish Constitution. This provision explicitly states that international agreements duly ratified and put into effect have the force of law, and their constitutionality cannot be subject to review by the Constitutional Court. Furthermore, **Article 90 mandates that in cases of conflict between international agreements concerning fundamental rights and freedoms and domestic legislation, the provisions of the international agreements shall prevail.** This unequivocal legal framework underscores Türkiye's obligation to implement ECtHR judgments fully and effectively, leaving no room for discretionary or selective enforcement by domestic authorities.
12. In *Ilgar Mammadov v. Azerbaijan* ((46 §4) [GC], no. 15172/13, 29.05.2019), the Court held that a state's failure to lift or annul charges deemed abusive by the Court— even if followed by a conviction—does not constitute restitutio in integrum, i.e., restoring the applicant's situation to what it would have been had the Convention not been violated. The Grand Chamber emphasized that **convicting an applicant based on the same grounds previously criticized in an ECtHR judgment, without annulling the original charges, fails to meet a state's obligation to fully restore the applicant's rights under the Convention (§ 192).** This principle is directly relevant to the present case, where domestic authorities, instead of implementing the ECtHR's judgment, have maintained and reinforced the applicant's wrongful prosecution and conviction.
13. In the infringement proceedings in *Kavala v. Türkiye*, the Court reaffirmed that its finding of a violation of Article 5 § 1, both separately and in conjunction with Article 18, rendered any measure arising from the charges related to the Gezi Park events and the attempted coup legally void (§ 145). The Court explicitly stated that, in the absence of other relevant and sufficient circumstances demonstrating Mr. Kavala's involvement in criminal activity, any measure— particularly one depriving him of his liberty—based on the same factual context **would constitute a continuation of the violation of his rights.** Furthermore, such measures would also amount to a **breach of Türkiye's obligation under Article 46 § 1 of the Convention to fully implement the Court's judgment (§ 151).**
14. The persistent failure of the Turkish judiciary to implement ECtHR judgments remains a well-documented systemic issue. **However, beyond this overarching problem,** there has been a growing trend in recent years where national judicial authorities deliberately refrain from enforcing ECtHR rulings in cases involving individuals who have been unjustly deprived of their liberty.¹ The continued detention and conviction of individuals **on legal grounds that**

¹ See most recently the judgment of the Kayseri 2nd Criminal Assize Court, in which it disregarded the European Court's *Yüksel Yalçinkaya* judgment and convicted the applicant once again on 12.09.2024. <https://www.dha.com.tr/gundem/aihmin-ihlal-karari-verdigi-feto-davasinda-yerel-mahkemeden-yine-ayni-karar-2504026>



have been explicitly criticized or deemed unlawful by the ECtHR not only perpetuates the violations identified by the Court but also undermines the fundamental principles of the Convention and the core values of the Council of Europe.

15. In *Demirtaş v. Turkey* (2) ([GC] no. 14305/17, §§ 340, 426-428, 22.12.2020), the Court unequivocally found that Mr. Demirtaş's detention lacked reasonable suspicion and was politically motivated, violating his fundamental rights—particularly his right to liberty and security, as well as his right to free elections. **Despite this clear ruling**, Turkish authorities have persistently failed to implement the Court's decision, leaving Mr. Demirtaş imprisoned without any legitimate legal justification. His continued detention exemplifies the systematic misuse of judicial mechanisms for political purposes, with the Turkish government **weaponizing the judiciary to suppress political opposition in direct contravention of the Convention and its obligations under Article 46.**²
16. The Court reached a similar conclusion in *Yüksekdağ Şenoğlu and Others v. Türkiye* (no. 14332/17, 08.11.2022), finding that Ms. Yüksekdağ Şenoğlu's detention violated the Convention. However, like Mr. Demirtaş, she remains imprisoned despite explicit calls for her release by both the Court and the Committee of Ministers. **Both were sentenced to severe prison terms by the Ankara 22nd Criminal Assize Court in a separate case based on the same evidence that the ECtHR had already deemed legally insufficient and politically motivated. Notably, the Ankara 22nd Criminal Assize Court has failed to provide its reasoned judgment for over seven months, further obstructing legal remedies and reinforcing concerns about judicial independence. In its most recent decision, the Committee of Ministers once again urged Turkish authorities to ensure the immediate release of Mr. Demirtaş and Ms. Yüksekdağ Şenoğlu, including through alternative measures to detention, pending the resolution of their appeals and applications before the Constitutional Court.**³
17. The failure to implement the judgments of the European Court of Human Rights extends beyond individual measures to encompass general measures as well. Türkiye has a significant number of leading cases pending before the Committee of Ministers, awaiting implementation. In fact, Türkiye ranks as the **Member State with the highest number of leading cases due to systemic issues**, with some cases remaining unimplemented for nearly two decades.⁴ According to the **2023 Annual Report of the Committee of Ministers**, as of **31 December 2023**, Türkiye had **446 cases pending execution**, including **35 leading cases under enhanced supervision** and **89 leading cases under standard supervision**. Notably, **24 leading cases under enhanced supervision** and **48 under standard supervision** have remained unresolved for **five years or more**, highlighting Türkiye's persistent non-compliance with its obligations under the Convention.⁵
18. The **Explanatory Report** accompanying the **Parliamentary Assembly of the Council of Europe's "(PACE") Monitoring Committee Report No. 2549** highlights that only **63% of**

² See <https://www.bbc.com/turkce/articles/c3gg094e2jwo>

³ CM/Del/Dec(2024)1514/H46-38, 5 December 2024

⁴ The *Oya Ataman* judgment (no. 74552/01) of 05.12.2006, concerning the freedom of assembly and association; the *Artun and Güvener* judgment (no. 75510/01) of 26.6.2007, concerning defamation of the President; the *Ülke* judgment (no. 39437/98) of 24.01.2006, concerning the conscientious objection; the *Bati and Others* judgment (no. 33097/96) of 03.06.2004, concerning the right to life.

⁵ 17th Annual Report of the Committee of Ministers 2023, p. 109, at: <https://rm.coe.int/annual-report-2023/1680af6e81>



Türkiye’s leading cases have been resolved, ranking Türkiye 39th out of 47 Member States in this category.⁶

19. The ECtHR’s findings regarding specific provisions of the Turkish Criminal Code have not been properly enforced by domestic courts. For instance, despite the ECtHR’s ruling in *Vedat Şorli v. Türkiye*, which found that the provision criminalizing “**insulting the president**” is frequently misused to **suppress freedom of expression**, the Turkish judiciary has **failed to implement** this judgment. Turkish courts **continue to apply this provision indiscriminately**, disregarding the **binding nature of the ECtHR’s findings** and perpetuating restrictions on freedom of expression.
20. In *Vedat Şorli v. Türkiye* (no. 42048/19), the ECtHR examined the conviction of the applicant for **insulting the President** and emphasized the necessity of judicial intervention. The Court found that Turkish national courts had relied on article 299 of the TCC, which grants the **President special protection** beyond that afforded to other individuals under the general defamation provisions of article 125. The ECtHR underscored that article 299 prescribes **disproportionately harsher penalties** for statements deemed insulting to the President, thereby creating a **privileged legal shield** that is incompatible with the principles of **pluralistic democracy and freedom of expression**. In this regard, the Court reaffirmed that **granting enhanced protection through special defamation laws is, in principle, inconsistent with the spirit of the Convention** (§ 46).
21. Despite the clear findings of the European Court, article 299 of the Turkish Criminal Code, which criminalizes “insulting the president,” continues to be applied excessively, leading to an alarming increase in prosecutions. This overly broad and **vaguely defined provision** has been systematically used **not only against political figures, journalists, and activists but also against ordinary citizens**, many of whom face criminal charges **merely for expressing critical opinions or engaging in political discourse**.⁷ The provision has effectively become a **tool for suppressing dissent**, with individuals being prosecuted **for social media posts, speeches, and even artistic expressions**. The widespread and arbitrary application of this law **raises serious concerns about the erosion of freedom of expression** and the increasing use of **judicial mechanisms to silence opposition voices**. Critics argue that **this misuse of the law undermines democratic principles**, reinforcing an environment of **fear and self-censorship** in which citizens are deterred from expressing legitimate criticism of the government and the president.
22. In practical terms, **when the ECtHR identifies a violation in its judgment, national courts should no longer rely on conflicting domestic provisions as a legal basis for prosecution or punishment in similar cases**. The Turkish Constitution explicitly mandates the implementation of international human rights treaties in cases of conflict with domestic law. **As a result, the failure of domestic courts to implement the ECtHR’s judgment in the Kavala case not only constitutes a violation of Türkiye’s international legal obligations but also undermines its own constitutional order**. This ongoing defiance of binding ECtHR rulings further erodes the rule of law and weakens judicial integrity in Türkiye.

⁶ Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Report No. 15618, “The honoring of obligations and commitments by Türkiye”, 26.09.2022, para. 48.

⁷ See <https://gazeteksijen.com/turkiye/dilruba-kayseriliogluna-cumhurbaskanina-hakaretten-hapis-cezasi-226969>



23. **Therefore, the authorities' failure to implement the Osman Kavala v. Türkiye judgment should not be viewed in isolation but rather as part of a broader systemic pattern of non-compliance with ECtHR rulings.** This persistent disregard for international human rights obligations highlights the need for a holistic approach that addresses not only individual cases but also the underlying structural deficiencies within the Turkish judicial system.

IV. Conclusion and Recommendations

24. The developments in the case of Osman Kavala are not merely an individual legal issue but a reflection of **deep-seated structural problems** concerning Türkiye's adherence to the rule of law and fair trial principles. Türkiye's continued failure to comply with the Court's judgment, which unequivocally found Kavala's detention to be arbitrary, raises serious concerns regarding judicial independence, freedom of expression, and political rights. The persistent deficiencies in the independence of domestic courts, coupled with the blatant disregard for international obligations, pose a significant threat to Türkiye's democratic process and its commitments to the Council of Europe.
25. The systematic failure of the Turkish judiciary to implement ECtHR rulings not only exacerbates domestic legal injustices but also undermines the credibility of international human rights mechanisms. Türkiye's continued defiance of binding ECtHR decisions weakens the rule of law, erodes trust in international legal standards, and sets a dangerous precedent that diminishes the enforceability of fundamental rights across the Council of Europe. This failure to uphold international legal commitments calls into question Türkiye's standing as a member state that respects the foundational principles of the Convention.
26. The ongoing detention of Osman Kavala, despite the ECtHR's clear ruling for his immediate release, underscores the gravity of this systemic issue. The deficiencies in his trial process, the judiciary's reluctance to implement international human rights rulings, and Türkiye's broader disregard for the Convention illustrate the extent of the problem. This situation not only continues to violate Kavala's rights but also represents a broader attack on the rule of law, democratic values, and fundamental freedoms in Türkiye. Moreover, the refusal to execute ECtHR judgments threatens the integrity of the European human rights system and undermines the collective legal framework designed to protect human rights across the region.

İFÖD urges the Committee of Ministers

1. **Ensure Immediate Release of Osman Kavala:** Reiterate the urgent need for the immediate release of Osman Kavala and call on Turkish authorities to fully comply with the European Court of Human Rights' ruling without further delay.
2. **Address the Structural Issues in the Judiciary:** Urge Türkiye to undertake comprehensive judicial reforms to ensure the independence of the judiciary, particularly by restructuring the Council of Judges and Prosecutors ("HSK") to eliminate executive influence.
3. **Condemn the Misuse of Criminal Law to Suppress Dissent:** Call for legislative amendments to repeal or substantially revise problematic provisions such as Article 299 (insulting the president) and Article 217/A (spreading misleading information) of the Turkish Penal Code, which are systematically used to silence political opposition, journalists, and civil society.



4. **Ensure the Annulment of Politically Motivated Convictions:** Encourage Türkiye to overturn politically driven convictions, including those against Kavala, Demirtaş, and Yüksekdağ, and to restore the rights of individuals whose freedoms have been unlawfully restricted.

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