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

Reply from the authorities (19/02/2021) following communications from NGOs in the case of Kavala v. Turkey (Application No. 28749/18).

Information made available under Rule 9.6 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 : 1398^e réunion (mars 2021) (DH)

Réponse des autorités (19/02/2021) suite à des communications d'ONG concernant l'affaire Kavala c. Turquie (Requête n° 28749/18) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

19 FEV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ankara, February 2021

**THE GOVERNMENT'S SUBMISSION IN RESPONSE TO THE COMMUNICATION
FROM THE FREEDOM OF EXPRESSION ASSOCIATION (İFÖD) DATED 8
FEBRUARY 2021 AND HUMAN RIGHTS WATCH, THE INTERNATIONAL
COMMISSION OF JURISTS, AND THE TURKEY HUMAN RIGHTS LITIGATION
SUPPORT PROJECT DATED 7 FEBRUARY 2021**

Kavala (28749/18)

1. The Turkish Authorities would like to make the following explanations in response to the communication of Freedom of Expression Association (İFÖD) dated 8 February 2021 and Human Rights Watch, the International Commission of Jurists, and the Turkey Human Rights Litigation Support Project dated 7 February 2021 in the case of *Kavala* (28749/18).

2. At the outset, the Action Plan submitted to the Committee in January 2021, within the context of *Kavala* case, comprises Turkey's actions regarding the issues raised in the communications. The authorities reiterate its submissions in this regard.

3. In this submission the Authorities would like to clarify the following issues raised in the communications.

4. First of all, as explained in detail in the action plan mentioned above, the applicant is currently not detained within the scope of the offence subject to the ECtHR decision. Separate investigations were carried out against the applicant for multiple offences. In this context, the applicant is currently detained for the offence of espionage pursuant to Article 328 § 1 of the Turkish Criminal Code. The authorities would also like to note that as claimed by the NGO's, the joinder of the criminal cases under a case file does not mean that the applicant is under detention on account of the same criminal act. The merging of cases in a case file is a routine practice applied in cases where a suspect is accused due to multiple offences. The authorities would like to reiterate that the applicant is under detention on account of a case which has not been examined by the Court.

5. The applicant is not detained within the scope of the offence subject to the ECtHR decision. Separate investigations were carried out against the applicant for multiple offences. In this context, the applicant is currently detained for the offence of espionage pursuant to Article 328 § 1 of the Turkish Criminal Code which is not examined by the Court before.

6. The Government would like to refer the Committee of Ministers to the action plan submitted in January 2021. In the action plan, it was stated that the applicant's detention for

the offence of attempting to overthrow the Government (Article 312 of the TCC) in the detention order dated 1 November 2017 was ended on 18 February 2020, which was subject matter of the Court's judgment, and his second detention started on 19 February 2020 for the offence of attempting to overthrow the constitutional order (Article 309 of the TCC) was ended on 20 March 2020. Therefore, no further individual measure is required.

7. In the notification text of İFÖD, it was stated mainly that prevalent arrest and detention decisions did not contain enough reasoning and some statements of politicians constitutes an interference to Turkish Judiciary.

8. In this scope the Turkish Authorities would like to refer the Committee of Ministers to their action plan submitted on 9 January 2021 (see paragraphs 28-38).

9. Furthermore, the explanations provided by high ranking politicians are not directly or indirectly related to individual or general measures within the scope of the said Kavala judgment. Nevertheless, in the said action plan, safeguards of independent and impartial judiciary and planned works to strengthen it, explained in detail (see paragraphs 50-93).

10. In the notification note of other NGOs alleged that Turkey failed to execute individual measures by not releasing the applicant and individual and general measures in the action plan were insufficient.

11. In the submission communicated there are transcripts from the Commissioner's recent country visit reports. The authorities would like to note that the Committee's mandate is specifically outlined by the Convention. The execution of a given case is supervised within the boundaries outlined by the Court. Accordingly, the authorities would like to note that the work and procedure conducted by the Commissioner is a different mechanism that should be considered under its own procedure.

12. There are also comments with respect to Demirtaş judgment. The authorities would like to note that this is a different case under supervision. The comments made in this respect are not relevant concerning the Kavala case.

13. In the submission the NGO's in question claimed that no general measures have been taken to provide redress to the violation of Article 18. The authorities would like to reiterate that this violation was found in conjunction with the violation of Article 5/1. Accordingly, the general measures taken in respect of Article 5 are also relevant. Furthermore, the authorities would like to note that the European Court has not underlined a systemic problem in respect of violation of Article 18.

14. As regards the general measures, in the said action plan (see paragraphs 28-149) detailed explanations were put forward. Therefore, the Authorities are of the opinion that steps taken or planned to be taken in the general measures fully comply with the Court's judgment.

15. Lastly the Turkish authorities would like to note that in the submissions in question there are speculations on issues which are not subject to supervision process. The authorities would not like to comment on these speculations.

Conclusion:

16. The Turkish Government kindly invites the Committee to take into consideration its above-mentioned explanations within the scope of the execution of the judgment in the *Kavala* case.