



Ankara, November 2021

**THE GOVERNMENT'S SUBMISSION IN RESPONSE TO THE COMMUNICATION  
FROM THE APPLICANT'S LAWYER DATED 15 NOVEMBER 2021  
AND  
THE COMMUNICATION FROM THE FREEDOM OF EXPRESSION  
ASSOCIATION DATED 15 NOVEMBER 2021**

Kavala (28749/18)

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1. The Turkish Authorities would like to make the following explanations in response to the communication of the applicant's lawyer and the communication of the freedom of expression association dated 15 November 2021 in the case of *Kavala (28749/18)*.

2. Although the issues expressed in both notifications are similar, the answers of our Government are as follows:

3. The Turkish authorities have summarised and submitted detailed and updated information as to the legal grounds for the applicant's current detention in the Communications to the Committee of Ministers ("CM") dated 29 May 2020, 11 June 2020, 18 June 2020, 7 July 2020, 16 July 2020, 11 August 2020, 11 September 2020, 25 September 2020, 30 October 2020, 10 November 2020, in the action plan dated 19 January 2021 and in the communications dated 18 February 2021, 19 February 2021, 30 March 2021, 12 April 2021, 4 May 2021, 17 May 2021, 25 May 2021, 1 June 2021, 15 June 2021 and in the updated action plan dated 16 July 2021 and in the communication dated 13 August 2021, 6 September 2021, 13 September 2021, 21 September 2021, 4 October 2021, 11 October 2021, 18 October 2021, 2 November 2021 and updated action plan dated 17 November 2021. The Turkish authorities reiterate these explanations in this regard.

4. After the decision of the Court of Cassation, on 12 July 2021, the first hearing was held before the 13<sup>th</sup> Assize Court of Istanbul with the docket number 2021/178. The last hearing was held on 8 October 2021. The Assize Court reviewed the applicant's detention in this hearing and decided by majority vote (2-1) that his detention to be continued. Further, it has been decided that the next hearing will be held on 26 November 2021.

5. On 13 October 2021 the applicant's lawyers filed an appeal with the 14th Assize Court of Istanbul against the 13th Assize Court's decision on continuation of detention dated 8 October 2021, the 14th Assize Court examined the appeal on the case file and dismissed the objection on 26 October 2021.

6. The applicant's detention has been reviewed on 5 November 2021 and the Assize Court stressed that; *"Having regard to the fact that, in the present case, by taking into consideration the quality and nature of the offence imputed to the accused Mehmet Osman KAVALA, the current stage of the trial, the examination on HTS records and the base station data in the file, the reports drawn up as a result of the examination on digital materials, the existence of the concrete evidence demonstrating strong suspicion for the imputed offences in view of the MASAK report, the upper limit of the sentence prescribed for the imputed offences by the law, it has been understood that the judicial supervision measures will remain insufficient (...)"*

7. The proceedings before the İstanbul 30<sup>th</sup> Assize Court and İstanbul 13<sup>th</sup> Assize Court were merged. The purpose of merging the cases is de jure and de facto connection between the cases. Regarding the proceedings before the İstanbul 30<sup>th</sup> Assize Criminal Court, the Court of Appeal decided on 22 January 2021 that there was a connection between the two cases.

8. Similarly, during the appeal examination of the İstanbul 13<sup>th</sup> Assize Court's decision, the Court of Cassation decided on 18 March 2021 that there was a connection between the cases. The facts of these two cases are similar, notably the incidents occurred during the Gezi events. In this respect, the latter Court, the Court of Cassation, could consider the preceding decision rendered by the Court of Appeal. This does not suggest that there was a network operating inside the judicial system as claimed by the applicant's representatives.

9. Lastly, it should be noted that, merger of the cases does not mean that these cases resulted from different legal qualification of the same facts. The subject matter of the judgment at hand is the applicant's acts in relation with Gezi events. His current detention is ordered under different criminal proceedings, notably the offence of political or military espionage. In this respect, the authorities would like to reiterate that the applicant's detention, which was the subject matter of the judgment at hand, has already ended. Additionally, the last merger of the cases aimed at a comprehensive determination of the legal status of all accuseds within the scope of the Gezi Events.

10. The Turkish authorities would like to point out that, contrary to the claims, the applicant's trial has been ongoing in line with the procedures and law.

11. According to Article 9 of the Constitution, the Republic of Turkey is a State governed by the rule of law, and the judicial power is exercised by independent and impartial courts. Likewise, according to Article 138 of the Constitution, judges are independent in their

duties and render their decisions according to their conscientious convictions in accordance with the Constitution, the legislation and the law.

12. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the implementation of judicial power, send them circulars, or make recommendations or suggestions.

### **Conclusion**

13. The Turkish authorities will maintain submitting further information on the individual and general measures taken or envisaged to be taken in due time. In this respect, the Committee of Ministers will be kept informed on further developments.