

**RULE 9.2 SUBMISSION BY AMNESTY  
INTERNATIONAL TO THE COMMITTEE OF  
MINISTERS IN THE CASE OF KAVALA V.  
TURKEY**

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## **Contents**

INTRODUCTION	3
DEVELOPMENTS IN THE CASE OF OSMAN KAVALA BEFORE DOMESTIC COURTS SINCE THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENT	3
ULTERIOR AND ILLEGITIMATE PURPOSES: SILENCING HUMAN RIGHTS' DEFENDERS AND PERCEIVED GOVERNMENT CRITICS	6
A PATTERN OF ARBITRARINESS	7
ARBITRARY AND PUNITIVE PRE-TRIAL DETENTION: A TOOL FOR REPRESSION	8
CONCLUSIONS AND RECOMMENDATIONS	10

# INTRODUCTION

This briefing is submitted in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments, in advance of the 1377th meeting (June 2020) (DH) of the Ministers' Deputies on the execution of judgments. Amnesty International seeks to assist the Committee of Ministers in its evaluation of the general and individual measures that the Turkish government needs to take to comply with the findings of the *Kavala v. Turkey* (application no. 28749/18) judgment of the European Court of Human Rights (the Court). Accordingly, Amnesty International would like to share with the Committee of Ministers its concerns about a clear pattern of arbitrary, lengthy and punitive pre-trial detentions pursued for ulterior political ends, alongside abusive prosecutions based on broad and vague anti-terrorism legislation and other broadly applied criminal law provisions against human rights defenders and perceived government opponents and critics in Turkey.

The case of Osman Kavala, held in pre-trial detention since November 2017, is an emblematic example of this pattern of cases. The Court considered that it had been established beyond reasonable doubt that the measures complained of “pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence. Further, in view of the charges that were brought against the applicant, it considered that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders”.<sup>1</sup>

Turkey must not only comply with the Court’s ruling and promptly release him, but also guarantee against further arbitrary and politically motivated prosecutions and ensure an enabling environment for human rights defenders and civil society by changing its laws and practice in conformity with the European Convention on Human Rights (ECHR).

## DEVELOPMENTS IN THE CASE OF OSMAN KAVALA BEFORE DOMESTIC COURTS SINCE THE EUROPEAN COURT OF HUMAN RIGHTS’ JUDGMENT

The European Court’s ruling of 10 December 2019 found violations of Article 5§1 (right to liberty and security) and Article 5 § 4 (right to a speedy decision on the lawfulness of detention) of the ECHR, and that there had been a violation of Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5 § 1. The Court called on Turkey “to take all necessary measures to put an end to the applicant’s detention and to secure his immediate release”.<sup>2</sup>

On 28 January 2020, the domestic court heard the fifth hearing of the “Gezi Park trial” – the prosecution of 16 civil society figures under nine trumped up charges, including “attempting to overthrow the government”, carrying a sentence of life imprisonment without parole, for their alleged organization of the mass, overwhelmingly peaceful protests that swept across Turkey in the summer of 2013.<sup>3</sup> The domestic court did not release Osman Kavala, the sole defendant who remained in pre-trial detention, on the grounds that the European Court judgment was not yet binding according to Article 44 of the ECHR. On 18 February, at the sixth trial hearing, the İstanbul Heavy Penal Court No.30 ruled for the acquittal of nine defendants, including Osman Kavala, and his release from pre-trial detention. In the same decision, the court separated the cases of the other seven defendants, considering their being abroad and absent during the trial. In its reasoned judgment, the court stated that, ‘once the verdict becomes final, the İstanbul Chief Prosecutor’s office should be requested to consider doing what is necessary about the defendants for breaches of the Law on Meetings and Demonstrations’, strongly indicating that a further

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<sup>1</sup> Case of *Kavala v. Turkey*, (Application no. [28749/18](#)), Para 232.

<sup>2</sup> Case of *Kavala v. Turkey*, (Application no. [28749/18](#)), conclusions, paragraph 7.

<sup>3</sup> Other charges were: Damage to property (TCC 151/1), Qualified Damage to Property (TCC 152/1-a, 152/1-f, 152/2-a), Possession or Exchange of Hazardous Substances Without Permission (TCC Article 174), Damaging Places of Worship and Cemeteries (TCC 153), Violating the Law No. 6 136 for The Firearms and Knives and Other Tools, Qualified Robbery (TCC 149/1-a-c-d), Qualified Injury (TCC Article 86/1, 86/3-c, 87/3), Violating the Law on the Conservation of Cultural and Natural Property.

criminal investigation and prosecution could be launched against the defendants in relation to the Gezi Park protests.

Despite the ruling of the Istanbul Heavy Penal Court, Osman Kavala was not released: the Istanbul Chief Prosecutor immediately requested his detention in the scope of a separate ongoing investigation probing his alleged involvement in the 15 July 2016 coup attempt. After spending the night in police detention at the Istanbul Security Directorate, Osman Kavala was referred to court on 19 February with a request that he be remanded in pre-trial detention. The Istanbul Criminal Judgeship of Peace No.8 accepted the prosecutor's request for Osman Kavala to be remanded in pre-trial detention, this time on suspicion of "attempting to overthrow the constitutional order" (Turkish Penal Code Article 309) in relation to the 2016 coup attempt. This decision preventing Osman Kavala's release was described by the Council of Europe Commissioner for Human Rights Dunja Mijatovic as 'amounting to ill-treatment'<sup>4</sup>.

It was later revealed that the previous pre-trial detention of Osman Kavala under the Article 309 charge<sup>5</sup> had been lifted on 11 October 2019, on the grounds of him 'already being detained in the context of the ongoing Gezi Park trial before the Istanbul Heavy Penal Court No. 30' and 'because the available evidence against him supported the view that pre-trial detention was no longer a proportionate measure'. Osman Kavala's re-detention under Article 309 of the Penal Code in February 2020 took place despite the continued absence of any credible evidence being presented against him.

It is also important to note that on the day Kavala was re-remanded in prison, President Erdoğan made a televised statement at the ruling Justice and Development Party (AK Party) weekly group meeting including remarks which openly criticized the court's decision to acquit nine of the 16 defendants including Osman Kavala.<sup>6</sup>

Also on the same day of Osman Kavala's re-remanding, the Council of Judges and Prosecutors (CJP), in a widely reported move, gave permission for an investigation into the three judges of the Heavy Penal Court No. 30 who had issued the acquittal decision a day earlier, demonstrating further pressure on the independence of the domestic court, the appeal process and courts trying politicized cases more broadly. To this day, there has been no official statement about the outcome of that investigation. On 26 February, media known for their closeness to the government published allegations that the main judge in the case had links with individuals who had been convicted of, or dismissed for links with the Fethullah Gülen movement, which Turkey deems a terrorist organization responsible for the 15 July 2016 coup attempt.<sup>7</sup>

This surprising decision to launch an investigation into the judges prompted a letter by the Council of Europe Secretary General<sup>8</sup> on 21 February 2020, requesting information from Turkey's Minister of Justice on "*when a judicial assessment will be made of the lawfulness of Osman Kavala's continued detention as well as of the judges' findings*". To our knowledge, no response to this letter has been received by the Secretary General.

The Istanbul prosecutor in the Gezi Park trial lodged an appeal against the court's 18 February 2020 acquittal decision requesting the ruling be annulled and the nine defendants be convicted of the original charges. He claimed that there is a suspicion that Osman Kavala might abscond and, referring to the "quality and nature of the charged offense, the available evidence against

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<sup>4</sup> <https://www.coe.int/en/web/commissioner/-/the-reaction-of-the-council-of-europe-commissioner-for-human-rights-to-the-re-arrest-of-osman-kavala>

<sup>5</sup> Osman Kavala was taken into police custody on 18 October 2017 and then on 1 November 2017 was remanded in prison on charges under both Article 309 (attempting to undermine the constitutional order in relation to 2016 coup attempt) and Article 312 ( attempting to overthrow the government or preventing it from performing its duties partially or completely through force and violence, relating to 2013 Gezi Park protests) – both carrying an aggravated life sentence.

<sup>6</sup> "Look, it is not a simple incident of uprising. There are those types stirring trouble to provoke some countries behind the scenes, as Soros does. And, you know, its Turkey branch was behind bars. They attempted to acquit him with a maneuver yesterday. There are also others involved apart from him." 19 February 2020 <https://www.nytimes.com/2020/04/09/world/middleeast/osman-kavala-turkey.html> <http://bianet.org/english/politics/220275-president-erdogan-on-gezi-trial-they-attempt-to-acquit-him-with-a-maneuver>

<sup>7</sup> <https://www.takvim.com.tr/guncel/2020/02/26/son-dakika-gezi-davasi-hakimi-galip-mehmet-perk-hakkinda-flas-feto-iddiasi>

<sup>8</sup> <https://rm.coe.int/20200221-abdulhamit-gul-minister-of-justice-turkey/16809c93de>

him as well as the penalty foreseen by the law in the event that the defendant is found guilty", the prosecutor indicated that "pre-trial detention is a proportionate measure" for Osman Kavala.

On 9 March 2020, an Istanbul prosecutor requested that Osman Kavala be remanded in pre-trial detention and charged with the further offence of 'obtaining state secrets for political or military espionage' (Article 328 of the Turkish Penal Code) in the context of the same coup-related investigation<sup>9</sup>. The Istanbul Criminal Judgeship of Peace No. 10 ruled to remand him on the same day. The basis for the 'espionage' charge is closely related to the 'evidence' already submitted to justify a criminal investigation and pre-trial detention under Article 309 of the Turkish Penal Code in relation to the 2016 coup attempt allegations. As such, it does not provide any credible new evidence that could constitute criminal wrongdoing. On 20 March, the remand decision under Article 309 which was issued on 19 February 2020 was lifted for the second time<sup>10</sup>.

In its judgment on Osman Kavala v. Turkey, the European Court found a violation of Article 18 of the Convention, in conjunction with Article 5.1 with regards to both investigations under Article 309 and Article 312 of the Penal Code.<sup>11</sup> The Court relies on the following elements to support its finding of a violation of Article 18: the lapse of time between the 2013 Gezi events and Osman Kavala's arrest on 1 November 2017; the lack of credible or relevant evidence; an indictment citing as criminal evidence activities which are ordinary and legitimate activities of a human-rights defender and chair of an NGO, as well as speeches given by the President of Turkey– the country's highest-ranking official.

In this context, the violation of Article 18 and the Court's findings of "evidence of an ulterior purpose" have been further reinforced and aggravated by the subsequent chain of events:

- Firstly, the re-detention of Osman Kavala and the President of Turkey's comments on 19 February, condemning the previous day's acquittal decision by the Istanbul court in the Gezi Park trial;
- Secondly, the permission granted by the Council of Judges and Prosecutors, also on 19 February, for an investigation into the three judges of that court in response to them issuing their decision on the case, followed by reports in media close to the government intended to damage the reputation of the head of the court by asserting he had suspicious connections with individuals convicted of or dismissed for links with a group the government considers a terrorist organization;
- Thirdly, the March 2020 court decision to remand Osman Kavala on suspicion of 'espionage' in relation to the 2016 coup attempt (under Turkish Penal Code Article 328) after a considerable time lapse - of 42 months from the coup attempt itself and after Kavala had already been in prison for 28 months.
- and lastly, the lack of any new evidence presented to justify the new charge and the re-detention.

Clearly, this chain of events amounts to repetitive maneuvers to keep Osman Kavala in prison in pursuance of the ulterior purpose which the European Court has identified in its judgment: to silence him as an NGO activist and human rights defender, to dissuade other persons from engaging in such activities and to paralyze civil society in the country.

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<sup>9</sup> Article 328 (1) A person who secures information that, due to its nature, must be kept confidential for reasons relating to the security or domestic or foreign political interests of the State, for the purpose of political or military espionage, shall be sentenced to a penalty of imprisonment for a term of fifteen to twenty years. (2) In the offence is committed: a) to serve the interest of a country at war with Turkey, or b) During wartime or such that it jeopardizes the State's preparations for war or effectiveness in war or its military movements, the offender shall be sentenced to a penalty of aggravated life imprisonment.

<sup>10</sup> Article 102 of Turkey's Code of Criminal Procedure, amended in October 2019, foresees that pre-trial detention during the investigation stage cannot exceed 1,5 years. A further six months extension is possible for certain crimes, including crimes against the state and both Articles 309 and 312 fall under that category. On 25 February 2020, Osman Kavala's pre-trial detention under the Article 309 without an indictment reached the two-year legal limit.

<sup>11</sup> Case of Kavala v. Turkey, (Application no. [28749/18](#)), Para 215-232.

On 13 March 2020, Osman Kavala's lawyers made a Rule 9.1 submission to the Committee of Ministers<sup>12</sup>, reiterating the ongoing nature of the Article 18 violation against Osman Kavala.

## **ULTERIOR AND ILLEGITIMATE PURPOSES: SILENCING HUMAN RIGHTS' DEFENDERS AND PERCEIVED GOVERNMENT CRITICS**

The Court also identified, as it did previously in its judgment *Demirtaş v. Turkey*<sup>13</sup> (currently pending before the Grand Chamber), that Turkey uses pre-trial detention as a tool to silence and punish opposition politicians and human rights defenders. Similarly, the Commissioner for Human Rights stated in her February 2020 report on Turkey that<sup>14</sup> "judicial actions and criminal proceedings targeting human rights defenders for their lawful and legitimate activities is a widespread practice in Turkey".

In the case of Osman Kavala, the Court further emphasized the legitimate acts being presented as criminal evidence, the statements of the President and the time gap between the date of indictment and the concerned incidents (the Gezi Park protests) as providing grounds for the violation of Article 18 in conjunction with Article 5.1.

In numerous criminal proceedings concerning human rights defenders in Turkey, Amnesty International has observed that the evidence presented often consists of human rights work protected under the scope of the rights to freedom of expression, association and peaceful assembly, further protected by several legal instruments on human rights defenders<sup>15</sup>. In most examined cases, human rights defenders are accused of "being members of" or "aiding a terrorist organization", "making propaganda for a terrorist organization", "espionage" or other crimes against the state. The large time lapse between the commission of the alleged crimes and the subsequent criminal investigations is also a feature of many other abusive prosecutions against human rights defenders and perceived government critics.

These cases against perceived critics of the government and human rights defenders confirm serious concerns about the lack of independence and impartiality of the judiciary in Turkey: arbitrary arrests, punitive pre-trial detentions, charges based on spurious evidence often supported by smear campaigns in pro-government media and public statements from government officials signal the executive's pressure on and control over the judiciary. Judges and prosecutors face undue pressure as they risk being transferred, dismissed or subjected to disciplinary and criminal investigations if they make decisions considered to be undesirable by the government.<sup>16</sup>

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<sup>12</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809e5ec8](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809e5ec8)

<sup>13</sup> [https://hudoc.echr.coe.int/spa#{%22itemid%22:\[%22001-187961%22\]}](https://hudoc.echr.coe.int/spa#{%22itemid%22:[%22001-187961%22]}) Judgment dated 20 November 2018 found violations of Articles 5.3, 3 and 18 in conjunction with Article 5.3 in the case of *Selahattin Demirtaş*, the former leader of the Peoples' Democratic Party (HDP).

<sup>14</sup> para 155-166

<https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>

<sup>15</sup> "Strengthening the protection and role of human rights defenders in Council of Europe member States" – Parliamentary Assembly Recommendation 2085 (2016) [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=090000168070746f](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168070746f);

Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808fd8b9](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808fd8b9);

UN Declaration on Human Rights Defenders <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

<sup>16</sup> Examples include the 2014 transfer of judge Mustafa Bağarkası to a lower court following a decision to release four defendants in a prominent prosecution of lawyers, of Aydın Başar (the case of the judge who was transferred in 2019 from Zonguldak to Balıkesir and then to Erzurum as a disciplinary punishment for acquitting a defendant in a case brought for insulting the president), and in 2015, the removal of Aytaç Ballı, the judge removed before the judgment was issued in the prominent case of persons accused following the deaths of 301 people in a mine disaster in Soma.

# A PATTERN OF ARBITRARINESS

The examples below demonstrate that the violations identified by the Court in the Kavala judgment, as well as in Demirtas v. Turkey, are not isolated but rather ongoing and systemic, therefore requiring urgent consideration and the strongest reaction by the Committee of Ministers to ensure Turkey's compliance with the Court's judgment by addressing and putting an end to the shortcomings that enable arbitrary prosecutions and detention of perceived government critics and human rights defenders with the ulterior purpose of silencing them.

On 12 March 2020, Mehmet Raci Bilici, a national board member of the Human Rights Association (IHD) and former chair of the organization's Diyarbakır branch was sentenced to six years and three months' imprisonment for "membership to a terrorist organization" by the Diyarbakır Heavy Penal Court No.5. Although the indictment against Bilici was issued in 2017, the evidence presented consisted of wiretaps and audio surveillance of his activities in the period of 2011-2014, and some of his social media posts dating from 2015 and 2016. The activities subjected to the authorities' surveillance consisted of his monitoring of human rights violations, participation in meetings of human rights organizations and of the Democratic Society Congress (DTK), an umbrella organization focusing on Kurdish rights and politics which still functions and has not been closed down or proscribed by court order. The social media posts included in the indictment against Bilici do not represent evidence of criminal acts, let alone any connection to "terrorism". In the court's reasoned judgment, his conviction is mostly based on his presence at DTK meetings which Bilici notes that he attended on behalf of IHD. The March verdict against him is subject to appeal.

In another recent case, on 18 December 2019 Gönül Öztürkoğlu, the head of the Malatya branch of the Human Rights Association (IHD) was sentenced to six years and three months' imprisonment for "membership of a terrorist organization" by the Malatya Heavy Penal Court No. 5. The evidence that the verdict is based on, all of which should be considered as legitimate human rights activities under the scope of IHD's work, includes: participating in a number of peaceful protests; reading out statements as the head of IHD Malatya; and, having phone calls with the families of deceased alleged members of the armed Kurdistan Workers' Party (PKK) regarding the return of their bodies to the families for burial. Prior to her conviction, Gönül Öztürkoğlu spent four months in pre-trial detention before being released at the second hearing on 22 March 2019. The verdict against her is subject to appeal.

In the high-profile case known as the "Büyükkada trial"<sup>17</sup>, 11 human rights defenders – including Amnesty Turkey's former Chair, Taner Kılıç, and its former Director, İdil Eser, as well as representatives of other prominent human rights organizations in Turkey – have been facing trial on baseless charges and spent lengthy periods in pre-trial detention. At the trial hearing in November 2019, the prosecutor presented his final opinion, requesting that Taner Kılıç be convicted of "membership of a terrorist organization", and İdil Eser, Özlem Dalkıran, Günal Kurşun, Veli Acu and Nejat Taştan for "committing a crime on behalf of a terrorist organization", facing sentences of up to 15 years in prison. The prosecutor requested that the court acquits the remaining five defendants. The prosecutor's summing up included evidence presented in the original indictment which had already been rebutted in the course of previous trial hearings, including by the state's own evidence. The protracted nature of this baseless case and the prosecutor's request for convictions of prominent human rights defenders is yet another attempt to silence independent civil society in Turkey. A verdict is expected at the next hearing which is scheduled for 3 July 2020.

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<sup>17</sup> Taner Kılıç was taken into police custody on 6 June 2017 and remanded in prison three days later on 9 June where he remained until 15 August 2018 on baseless charges of 'membership of a terrorist organization.' Eight human rights defenders from a variety of human rights Turkish NGOs and two facilitators were detained on 5 July 2017 while participating in a human rights workshop on the Istanbul island of Büyükkada. The two facilitators and six of the HRDs were remanded in prison on 18 July 2017 until their release on bail on 25 October 2017 at the first hearing of their trial. The prosecutions of Taner Kılıç and the ten HRDs were merged and has since been dubbed the "Büyükkada trial".

Commissioner of Human Rights Nils Muiznieks voices dismay on rights defenders case <https://www.hurriyetdailynews.com/council-of-europe-commissioner-voices-dismay-on-turkish-human-rights-defenders-case-121063>

These examples demonstrate many of the same tactics pursued with the aim to target and silence human rights defenders: prosecutions based on lawful conduct from previous years, including human rights work, the criminalization of legitimate activities, and the smearing of human rights defenders as “terrorists”, “spies” or “criminals” by pro-government media, mirroring the prejudicial statements made by government officials.

## ARBITRARY AND PUNITIVE PRE-TRIAL DETENTION: A TOOL FOR REPRESSION

In its judgment, the European Court identified that the evidence relied upon for Kavala’s initial detention and continued pre-trial detention is insufficient to conclude that there was a reasonable suspicion of criminal wrongdoing by the applicant. The Court further determines that Kavala was detained for activities related to the exercise of Convention rights, amounting to a violation of Article 5.1. of the ECHR.<sup>18</sup>

As of December 2018, the last date for which official statistics are available, the total number of detainees in prison in Turkey without an indictment, pending trial or awaiting a final verdict was 55,892, representing over 21% of the total prison population.<sup>19</sup> The reasons behind this high number may be varied, and the government has claimed that the figure is now lower, but it is still crucial to identify the use of pre-trial detention as a punitive tool rather than a measure supported in each case by properly reasoned and individuated court decisions.

In high profile, politically motivated cases against human rights defenders and others perceived as government critics, it has become almost standard practice for prosecutors to request pre-trial detention and its repeated continuation during the investigation phase, and for judges of Criminal Judgeships of Peace to accept these requests. The burden is on the state to prove that pre-trial detention is a proportionate and necessary measure and that non-custodial alternatives do not provide sufficient guarantees to prevent flight, tampering with evidence or intimidating witnesses. At trial stage, courts also regularly rule for prolongation of pre-trial detention without providing individualized reasoning to justify the measure. Pre-trial detention orders are issued with insufficient evidence of the suspect having committed a crime, without assessments of necessity and proportionality or alternatives to detention, with the effect of punishing people for lawful activities such as attending peaceful protests or meetings or for a pattern of association with individuals deemed “terrorists” or opponents by the Government. The evidence in these cases indicates that pre-trial detention is used to punish and silence rather than exceptionally as a necessary measure to serve a legitimate purpose.<sup>20</sup>

As such, pre-trial detention orders in cases where the main evidence relates to freedom of expression, assembly or association are routinely extended in monthly reviews based on Article 108 of the Code of Criminal Procedure. Requests for release are almost always rejected without justification even when the person has been in pre-trial detention for prolonged periods without an indictment, as seen in the Kavala case.

In addition, during the prosecution phase the prosecutor has the power to object to the trial court’s decision to release. These objections are considered by another court, (that is, a court unfamiliar with the case) as the appeals court.

In many cases observed by Amnesty International, we have found pro forma and broad justifications referring to Article 100 of the Turkish Code of Criminal Procedure (CCP)<sup>21</sup> listing

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<sup>18</sup> Case of Kavala v. Turkey, (Application no. [28749/18](#)), para 156, para 157

<sup>19</sup> <https://dokuz8haber.net/gundem/tuik-2018-sonu-ceza-infaz-kurumu-istatistiklerini-acikladi-tutuklu-yargilananlarin-sayisi-hizla-artiyor/>

<sup>20</sup> Van der Tang v Spain (19382/92), European Court (1995) §55, Patsuria v Georgia (30779/04), European Court (2007) §71; Letellier v France (12369/86), European Court (1991) §51, Patsuria v Georgia (30779/04), European Court (2007) §§75-76.

<sup>21</sup> Grounds for arrest with a warrant Article 100 – (1) If there are facts that tend to show the existence of a strong suspicion of a crime and an existing “ground for arrest”, an arrest warrant against the suspect or accused may be rendered. There shall be no arrest warrant rendered if arrest is not proportionate to the importance of the case, expected punishment or security measure. (2) At the below mentioned instances, a “ground for arrest” may be deemed as existing: a) If the suspect or accused had fled, eluded or if there are specific facts which justify the



“catalogue crimes” as a standard reasoning to place people in pre-trial detention and to prolong it, replacing the individual assessment, and the principles of necessity and proportionality. The abusive use of Article 100 of the CCP was also emphasized by the Council of Europe Commissioner for Human Rights in a third-party intervention to the Court relating to ten freedom of expression cases.<sup>22</sup>

It is important to underscore the concerns regarding Criminal Judgeships of Peace, subjected to strong criticism by international human rights organizations and bodies including the European Commission for Democracy through Law (Venice Commission) for not functioning in compliance with international human rights law and standards. **Therefore, we would like to reiterate that structural reforms to the Criminal Judgeships of Peace are necessary to prevent abusive use of pre-trial detention and protect the right to liberty.**<sup>23</sup>

Under the latest amendments to the Law on the Execution of Sentences and Security Measures<sup>24</sup>, brought about in the context of the threat posed by the COVID-19 pandemic, up to 90,000 convicted prisoners were released, but this excluded tens of thousands of pre-trial detainees and convicted prisoners held under overly broad anti-terrorism laws, including human rights defenders and journalists. Furthermore, there have been no plans to consider pre-trial detainees for release in light of COVID-19, and those who are held in pre-trial detention without charge including Osman Kavala (62 years old), Selahattin Demirtaş (who has serious health problems) and Ahmet Altan (70 years old) who face increased risk to their health if an outbreak occurs in prison.<sup>25</sup>

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suspicion that he is going to flee. b) If the conduct of the suspect or the accused tend to show the existence of a strong suspicion that he is going to attempt ; 1. To destroy, hide or change the evidence, 2. To put an unlawful pressure on witnesses, the victims or other individuals. do we need all this? (3) If strong grounds for suspicion are present, that the below mentioned crimes have been committed, the ground for arrest with a warrant ” may be deemed as existing: a) Following crimes as defined in the Turkish Penal Code dated 26.9.2004 and No. 5237: 1. Genocide and crimes against humanity (Arts. 76, 77, 78), 2. Killing with intent (Arts. 81, 82, 83), 3. Intentional wounding committed by a gun (Art. 86/3-a) and intentional wounding which has been aggravated by its result (Art. 87) 4. Torture (Arts. 94, 95), 5. Sexual assault (Art. 102, except for subparagraph 1), 6. Sexual abuse of children (Art. 103), 7. Theft (Arts. 141, 142), and aggravated theft (Arts. 148, 149) 8. Producing and trading with narcotic or stimulating substances (Art. 188), 9. Forming an organization in order to commit crimes (Art. 220, except for subparagraphs 2, 7 and 8), 10. Crimes against the security of the state (Arts. 302, 303, 304, 307, 308), 11. Crimes against the Constitutional order and crimes against the functioning of this system (Arts. 309, 310, 311, 312, 313, 314, 315), b) Smuggling with guns, as defined in Law on Guns and Knives and other Tools, dated 10.7.1953, No. 6136, (Art. 12), c) The crime of embezzlement as defined in the Law on Banks, dated 18.6.1999, No. 4389, Art. 22, subparagraphs (3) and (4) , d) Crimes defined in Combating Smuggling Act, dated 10.7.2003, No. 4926, and carry imprisonment as punishment, e) Crimes defined in Act on Protection of Cultural and Natural Substances, dated 21. 7.1983, No. 2863, Arts. 68 and 74, f) Crime of intentionally start a fire in forests, as defined in the Law on Forests, dated 31 .8. 1956, No. 6831, Art. 110, subsections 4 and 5. (4) In cases where the committed crime is punishable with judicial fine, or with imprisonment not more than one year at the upper level, no arrest warrant shall be issued.

<sup>22</sup> Third party intervention by the Council of Europe Commissioner for Human Rights to cases of Ahmet Hüsrev Altan v. Turkey (no. 13252/17) Alpay v. Turkey (no. 16538/17) Atilla Taş v. Turkey (no. 72/17) Buluç v. Turkey (no. 25939/17) Ilıcak v. Turkey (no. 1210/17) Mehmet Hasan Altan v. Turkey (no. 13237/17) Murat Aksoy v. Turkey (no. 80/17) Sabuncu and Others v. Turkey (no. 23199/17) Şık v. Turkey (no. 36493/17) Yücel v. Turkey (no. 27684/17)

para 26. <https://rm.coe.int/third-party-intervention-10-cases-v-turkey-on-freedom-of-expression-an/168075f48f>

<sup>23</sup> The Criminal Judgeships of Peace were established in 2014 replacing the criminal courts of peace. They have the power to decide on protective measures during the investigation phase (e.g. to issue search, arrest and detention warrants or permitting wire-taps for the interception of communication), to decide on removal of the content and blocking of access to Internet websites or closing them down, to decide on the merits on traffic offences and to review the decisions of public prosecutors on non-prosecution.

However, the judicial review mechanism against the decisions of Criminal Judgeships of Peace do not meet requirements for independence and impartiality. According to Article 268 of the Code of Criminal Procedure of Turkey, decisions of the Criminal Judgeships of Peace can only be reviewed by another Criminal Judgeship of Peace of the same district with the following number.

This horizontal and “closed-circuit” appeals mechanism does not allow the decisions to be reviewed by a higher court (in a higher authority), rather allowing the decisions to be reviewed between “colleagues” who share the same experience and expertise. This poses a clear threat to Article 5.4 of the ECHR which secures the right to actively seek judicial review of detention. The Council of Europe’s Venice Commission has recommended a series of reforms to the Criminal Judgeship of Peace courts, including removal of their competence at investigation stage: see <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29004-e>

<sup>24</sup> <https://www.amnesty.org/en/latest/news/2020/04/prison-release-law-leaves-prisoners-at-risk-of-covid/>; Council of Europe Commissioner of Human Rights <https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe>

<sup>25</sup> Joint Public Statement Turkey: Rights Groups Call for Urgent Release of Imprisoned Journalists, Human Rights Defenders And Others, Now At Risk Of Covid-19, 30 March 2020

<https://www.amnesty.org/download/Documents/EUR4420472020ENGLISH.pdf>

and “Twenty-four Rights Groups Call on Turkey to Release All those Arbitrarily Detained, Now at Risk of Covid-19,” April 17, 2020: <https://www.hrw.org/news/2020/04/17/twenty-four-rights-groups-call-turkey-release-all-those-arbitrarily-detained-now>

# CONCLUSIONS AND RECOMMENDATIONS

Criminal proceedings are still routinely initiated against human rights defenders and perceived or real political opponents and government critics in Turkey for exercising their human rights, including expressing their dissent against the government, and those individuals are still subjected to lengthy pre-trial detention – in some cases, despite rulings of the European Court of Human Rights calling for their immediate release. The chilling effect on civil society identified by the European Court in the Kavala judgment should be a matter of grave concern for Turkey and for the Committee of Ministers.

Amnesty International is concerned about a pattern of ongoing prolonged pre-trial detentions, broad interpretation and arbitrary application of criminal law and anti-terrorism legislation that unduly restrict the rights of human rights defenders and others. The silencing of human rights defenders and critical voices through violations of the right to liberty and security is likely to continue unless abusive legislation is repealed or amended, and concrete steps are taken to guarantee the independence and impartiality of the judiciary.

The examination by the Committee of Ministers of the implementation of Osman Kavala's judgment brings a unique opportunity to address the systemic failures, identified by the Court, which enable arbitrary detention and politically motivated prosecutions to silence government critics and human rights defenders. Clearly, without strong condemnation and effective measures, this pattern of abusive detention may become even more entrenched in Turkey.

## RECOMMENDATIONS

### AMNESTY INTERNATIONAL RECOMMENDATIONS TO THE COMMITTEE OF MINISTERS:

Amnesty International reminds the Committee of Ministers of its Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe which asks the Committee of Ministers to pay “special attention to the execution of judgments of the European Court of Human Rights concerning human rights defenders and the enabling environment for human rights work, which have yet to be implemented”<sup>26</sup>. Amnesty International urges the Committee of Ministers to:

- Examine the implementation of the Osman Kavala v. Turkey judgment under enhanced supervision and as a priority and leading case at its next 1377th meeting (June 2020) (DH) meeting on 4 June 2020 and keep the monitoring of this case in the agenda of every DH meeting until Mr Osman Kavala is released,
- Call on the Turkish government to respond to the February 2020 letter by the Secretary General of the Council of Europe if it hasn't yet done so, and make the response public.

### URGE THE TURKISH AUTHORITIES TO:

- Immediately release Osman Kavala and recall that he must not be re-detained in the future under the presented evidence as assessed by the Court, in order to comply with the judgment of the Court;
- Eliminate all consequences of the criminal charges brought against Osman Kavala, including by fully restoring his civil and political rights;
- Drop the charges under Article 328 of the Penal Code which is based on evidence found by the European Court to be unconvincing and irrelevant;

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<sup>26</sup> Committee of Ministers Recommendation CM/Rec (2018)11 on the need to strengthen the protection and promotion of civil society space in Europe, 28 November 2018.

- End the use of arbitrary pre-trial detention to silence and punish human rights defenders and perceived government critics who exercise their right to freedom of expression, assembly and association through peaceful dissent;
- Drop abusive criminal charges and prosecutions and release imprisoned human rights defenders, politicians and journalists who have been imprisoned simply for exercising their rights, including Osman Kavala;
- Ensure the independence and impartiality of the judiciary and, in particular, with respect to judicial decisions of deprivation of liberty, urge Turkey to take the necessary measures to ensure that the role and functioning of Criminal Judgeship of Peace does not undermine judicial independence.
- Remind Turkey that, in line with Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe, Member States should take effective measures to protect civil society space, in particular to<sup>27</sup>:
  - a) prevent violations of the rights of human rights defenders including smear campaigns, threats and attacks against them, and other attempts to hinder their work;
  - b) ensure the independent and effective investigation of such acts and hold those responsible accountable through appropriate administrative measures or criminal procedures, and ensure that criminal, civil and administrative laws and procedures are not applied in a way that hinders and criminalises the work of human rights defenders;
  - c) ensure, while respecting their legal traditions, the independence of their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;”

**TO ENSURE THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, THE COMMITTEE OF MINISTERS MUST CALL ON TURKEY TO:**

- Repeal Article 26 of Law no. 7145, which allows authorities to dismiss judges and prosecutors for a further three years after the end of state of emergency if they are assessed to have been members of, or acted in union or were in contact with “terrorist organizations” or structures or groups that the National Security Council has decided are engaged in activities against national security;
- Reform the structure of Council of Judges and Prosecutors (CJP) and take the necessary measures, including legislative changes, to provide transparency and safeguards against political interference in the process for the selection and appointment of judges and prosecutors, and enable judicial review against all disciplinary decisions of the CJP;
- Government and other state officials should refrain from making comments regarding ongoing criminal investigations and prosecutions that may prejudice the outcome of the proceedings.

**AMNESTY INTERNATIONAL RECOMMENDS THAT THE COMMITTEE OF MINISTERS REQUESTS THE FOLLOWING CLARIFICATIONS FROM THE TURKISH GOVERNMENT:**

- Ask the Government to provide statistics of the current number of people in prison with a breakdown of those that are detained without charge, those in pre-trial detention or on remand and those who have been convicted and sentenced.
- Ask the government for the length of pre-trial detentions of those who are being charged with Article 220/6, 220/7, 314 and 328 of the Turkish Penal Code and Article 7/2 of the Anti-Terrorism Law No. 3713.

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<sup>27</sup> Committee of Ministers Recommendation CM/Rec (2018)11 on the need to strengthen the protection and promotion of civil society space in Europe, 28 November 2018.

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