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Turkey Human Rights
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Turkey's 'evasive judicial tactics' to circumvent its obligation to implement the ECtHR's Selahattin Demirtaş and Osman Kavala judgments

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Briefing to the Council of Europe Committee of Ministers delegates organized by the European Implementation Network

6 September 2021

Our joint Rule 9.2 submissions to the CM in relation to the supervision of the execution of the Demirtaş and Kavala judgments

Submissions by the TLSP, HRW and the ICJ in relation to *Osman Kavala v. Turkey*:

- The submission on 29 May 2020:
[http://hudoc.exec.coe.int/ENG?i=DH-DD\(2020\)501E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2020)501E)
- The submission on 2 November 2020:
[http://hudoc.exec.coe.int/ENG?i=DH-DD\(2020\)1007E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2020)1007E)
- The submission on 7 February 2021:
[http://hudoc.exec.coe.int/ENG?i=DH-DD\(2021\)186E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2021)186E)
- The submission on 18 August 2021:
[http://hudoc.exec.coe.int/ENG?i=DH-DD\(2021\)836E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2021)836E)

Submission by the TLSP, ARTICLE 19, the FIDH, HRW and the ICJ, in relation to *Selahattin Demirtaş v. Turkey (2)*:

- The submission on 7 February 2021 :
[http://hudoc.exec.coe.int/ENG?i=DH-DD\(2021\)192revE](http://hudoc.exec.coe.int/ENG?i=DH-DD(2021)192revE)
- The submission on 23 July 2021 :
[http://hudoc.exec.coe.int/ENG?i=DH-DD\(2021\)759E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2021)759E)

**The submissions identify several 'evasive judicial tactics' adopted by Turkey in course of the judgment implementation supervision process of the CM.
These tactics are used by Turkey to:**

1. Ensure the continuation of the detention of Mr. Demirtaş and Mr. Kavala for the illegitimate political purposes
2. Argue before the CM that the individual measures -namely the immediate release of the applicants- were implemented
3. Claim that the ongoing detentions of Mr. Demirtaş and Mr. Kavala do not fall within the scope of the ECtHR judgments
4. Reveal that their ongoing imprisonments are for 'new' charges or cases that are not covered in the Court's judgments
5. Argue that the legal status of the applicants changed (detainee v convict)

We identified at least 5 ‘evasive judicial tactics’ adopted by Turkey

(the list is not exhaustive)

Tactic 1: ‘Issuing non-implemented or ‘sham’ release orders’

Used in both cases. The Turkish government has been arguing before the Committee that the individual measures of release were implemented as at one point in the proceedings the domestic authorities adopted release orders for Mr. Demirtaş and Mr. Kavala. In reality, however, both applicants were never released as these orders were always followed by re-detention and/or further imprisonment orders.

Tactic 2: ‘Initiating multiple criminal proceedings against the applicants on the same or similar factual and legal grounds’

Used in both cases. The Turkish authorities have been using multiple files, investigations, and cases on the same or similar factual and legal grounds that had already been reviewed by the ECtHR and using them as allegedly ‘new’ grounds to justify further detention orders especially following the ECtHR judgment and/or the increased pressure from the CM.

Tactic 3: 'Chain detention orders'

Tactic 4: 'Unwarranted procedural decisions'

Used in both cases. Following the release orders that are not intended to be implemented, both applicants were re-detained for the same or similar facts, grounds or charges already examined by the ECtHR. This has, so far, taken place in form of (1) re-classification of the same facts and acts under different articles of the Penal Code; (2) re-activating other files and generating detention orders under them; and (3) expediting different procedures and concluding them with heavy imprisonment decisions.

Used in both cases. The proceedings against the applicants are made complex by unwarranted joinder or dis-joinder decisions to first ensure prolongation of the detentions and second to make it more difficult for the CM to follow the proceedings.

Tactic 5: 'Expediting cases to obtain a conviction

Used in relation to Mr. Demirtaş so far. The proceeding before the Istanbul 26th Assize Court was expedited when the case was still pending before the ECtHR. It was concluded with one of the heaviest imprisonment decisions comparing to similar cases. The appeal of Mr. Demirtaş was rejected and the conviction became final in April 2021 while the CM was considering the next steps to take to ensure implementation. The government has been using this case repeatedly to argue before the CM that the ECtHR's judgment does not apply to Mr. Demirtaş's ongoing imprisonment. He is currently held in prison both as a convict serving this sentence and as a pre-trial detainee in relation to the case before the Ankara 22nd Assize Court.

Our recommendations to the CM in relation to both cases

- to take into account Turkey's 'evasive judicial tactics' in its analysis of the developments in the domestic proceedings against Mr. Demirtaş and Mr. Kavala;
- to determine its next steps in the judgment implementation supervision process accordingly; and
- to adopt a holistic approach in its application to the ECtHR judgments and form the scope of its supervision on the individual and general measures accordingly.

Our recommendations to the CM in relation to *Selahattin Demirtaş v. Turkey (2)* judgment

(to be determined at the 1411DH 14-16 September 2021 meeting)

1. to insist on the immediate release of Selahattin Demirtaş as required by the ECtHR judgment, and indicate that continuation of Mr. Demirtaş's detention in any form under the criminal proceedings remaining within the scope of the Grand Chamber judgment constitutes a prolongation of the violation of his rights under the Convention, as found by the ECtHR;
2. to underline that the Grand Chamber judgment clearly applies to Mr. Demirtaş's ongoing pre-trial detention, the criminal proceeding under which he was convicted, and to any other ongoing or future proceedings or detention, in which the factual or legal basis is substantially similar to that already addressed, and found to violate his Convention rights, by the ECtHR in its judgment;
3. to call for the halt of all criminal proceedings initiated against Mr. Demirtaş following the constitutional amendment lifting his parliamentary immunity, as the Grand Chamber found that the amendment did not meet the legality standard of the Convention, and that all proceedings initiated pursuant to it should therefore be deemed unlawful;
4. to request the Government of Turkey to end the persecution through abusive criminal proceedings of Selahattin Demirtaş, including by dropping all charges under which he has been investigated, prosecuted and detained, which have pursued an ulterior purpose of stifling pluralism and limiting freedom of political debate, in conformity with the Court's finding that his rights under Article 5(1) in conjunction with Article 18 were violated, and that his exercise of the right to freedom of expression was wrongfully used as evidence to incriminate him;
5. to emphasise that *restitutio in integrum*, in this case, requires the cessation of the persecution of Mr. Demirtaş through criminal proceedings, in the form of future investigations, prosecutions and detentions, including pre-trial detentions, solely for his political activities and his political speech; and
6. In the event that Selahattin Demirtaş remains in detention at the time of the 1411DH 14-16 September 2021 meeting, to trigger infringement proceedings against Turkey under Article 46(4) of the Convention.

Our recommendations to the CM in relation to *Osman Kavala v. Turkey* judgment

(to be determined at the 1411DH 14-16 September 2021 meeting)

1. to call on Turkey to comply with the ECtHR judgment and ensure the immediate and urgent release of Osman Kavala; and
2. in the event that Osman Kavala remains in pre-trial detention at the time of the 1411th 14-16 September 2021 meeting, to trigger infringement proceedings against Turkey under Article 46(4) of the Convention.

Thank you