



TEXTS ADOPTED

P9_TA(2022)0199

The case of Osman Kavala in Turkey

European Parliament resolution of 5 May 2022 on the case of Osman Kavala in Turkey (2022/2656(RSP))

The European Parliament,

- having regard to its previous resolutions on Turkey, in particular those of 19 May 2021 on the 2019-2020 Commission Reports on Turkey¹ and of 21 January 2021 on the human rights situation in Turkey, in particular the case of Selahattin Demirtaş and other prisoners of conscience²,
- having regard to the statements of Parliament's Standing Rapporteur for Turkey and the Chair of the Delegation to the EU-Turkey Joint Parliamentary Committee of 21 April 2022 on the final hearing of the Gezi trial and of 18 December 2020 on the court decision on Osman Kavala, and to the statement of the Chair of the Delegation to the EU-Turkey Joint Parliamentary Committee of 20 February 2020 on Osman Kavala's detainment,
- having regard to the Commission communication of 19 October 2021 on EU Enlargement Policy (COM(2021)0644) and to the accompanying Turkey 2021 Report (SWD(2021)0290),
- having regard to the European Council conclusions of 24 June 2021, and to all previous relevant Council and European Council conclusions,
- having regard to the Council conclusions of 14 December 2021 on the enlargement and stabilisation and association process,
- having regard to the statement by the High Representative of the Union for Foreign Affairs and Security Policy of 26 April 2022 on the conviction of Mr Osman Kavala, and to previous European External Action Service statements on his case,
- having regard to the European Court of Human Rights (ECtHR) judgment of 10 December 2019 in the case of Kavala v Turkey (28749/18), which became final on 11 May 2020,

¹ OJ C 15, 12.1.2022, p. 81.

² OJ C 456, 10.11.2021, p. 247.

- having regard to the relevant resolutions by the Committee of Ministers of the Council of Europe, including the interim resolution of 2 December 2021 on the execution of the judgment of the European Court of Human Rights in Kavala against Turkey, and the interim resolution of 2 February 2022 on the same topic, which led to the launch of infringement proceedings against Turkey owing to its refusal to implement the 2019 judgment of the ECtHR and release Osman Kavala,
 - having regard to the reaction of the Council of Europe Secretary-General of 18 February 2020 to the Osman Kavala ruling in Turkey and to the reaction of the Council of Europe Commissioner for Human Rights of 19 February 2020 to the re-arrest of Osman Kavala,
 - having regard to the European Convention on Human Rights (ECHR) of 4 November 1950, to which Turkey is a State Party,
 - having regard to Article 46 ECHR, which states that ‘the High Contracting Parties undertake to abide by the final judgments of the Court [ECtHR] in any case to which they are parties’, and therefore having regard to the obligation of Turkey to implement all judgments of the ECtHR,
 - having regard to the International Covenant on Civil and Political Rights, which was adopted by the UN General Assembly on 19 December 1966 and to which Turkey is a State Party, and in particular to Article 9 thereof on arbitrary arrest and detention,
 - having regard to the decision of the Istanbul 13th High Criminal Court regarding the Gezi trial of 25 April 2022,
 - having regard to the decision of the Istanbul 30th High Criminal Court regarding the Gezi trial of 18 February 2020,
 - having regard to the EU Guidelines on Human Rights Defenders,
 - having regard to the Universal Declaration of Human Rights of 10 December 1948,
 - having regard to Rule 144(5) and 132(4) of its Rules of Procedure,
- A. whereas on 25 April 2022, Istanbul’s 13th High Criminal Court, presided by Judge Mesut Özdemir, sentenced Osman Kavala, a philanthropist and prominent human rights defender, to life in prison without parole, finding him guilty of attempting to overthrow the government, but acquitting him of espionage; whereas seven other defendants including architect Mücella Yapıcı, lawyer Can Atalay, city planner Tayfun Kahraman, director of Boğaziçi European School of Politics Ali Hakan Altınay, founder of Istanbul Bilgi University Yiğit Ali Ekmekçi, film producer Çiğdem Mater Utku and documentary filmmaker Mine Özerden were sentenced to 18 years in prison on the same charges; whereas the court ordered their immediate arrest in the courtroom; whereas these allegations are politically motivated and have never been substantiated, not even in the ruling of 25 April 2022;
- B. whereas Osman Kavala was first arrested and imprisoned on 1 November 2017 on charges related to the Gezi Park protests in 2013 and the attempted coup in 2016; whereas the Gezi Park trial began in June 2019; whereas Mr Kavala was accused of financing the Gezi Park protests and organising them; whereas on 18 February 2020,

Istanbul's 30th High Criminal Court acquitted Mr Kavala in the Gezi trial and ordered his immediate release, citing the complete absence of concrete and material evidence confirming that the alleged crimes had been committed; whereas the court also acquitted Mücella Yapıcı, Can Atalay, Tayfun Kahraman, Ali Hakan Altınay, Yiğit Aksakoğlu, Yiğit Ali Ekmekçi, Çiğdem Mater Utku and Mine Özerden; whereas Mr Kavala was the only defendant still in custody by the time of his acquittal, having been held in unlawful pre-trial detention since 18 October 2017 on unsubstantiated charges;

- C. whereas on 22 January 2021, the Third Criminal Chamber of the Istanbul Regional Court of Justice, the court of appeals, reversed the rulings acquitting Mr Kavala and eight other defendants;
- D. whereas referring to the charges brought against the defendants in the case, the court justified its reversal by indicating that the pieces of evidence such as the defendants' social media posts, press statements and the slogans they chanted were not considered when the previous ruling was handed down;
- E. whereas seven defendants, including journalist Can Dündar and actor Mehmet Ali Alabora, remained abroad for the duration of the trial; whereas the court had separated their cases from those of the nine defendants still in the country and issued arrest warrants for them; whereas in its decision of 18 February 2020, the court rescinded the arrest warrants;
- F. whereas just a few hours after his acquittal and before his release order could be implemented, Mr Kavala was rearrested and transferred to police custody at the behest of the Istanbul Chief Public Prosecutor İrfan Fidan under Article 309 of the Turkish Criminal Code on charges of attempting to undermine the constitutional order in the context of an ongoing parallel investigation regarding his supposed involvement in the attempted coup of 15 July 2016;
- G. whereas on 19 February 2020, President Recep Tayyip Erdoğan of Turkey condemned the judgment of Istanbul's 30th High Criminal Court, claiming Mr Kavala's acquittal to be part of a scheme hatched by individuals 'who wish to spark uprisings in certain countries and stir up trouble' and referring to these individuals as 'wilful enemies of the state and its people'; whereas President Erdoğan's statements, together with those of other high-level officials, actively undermine the independence of the Turkish judiciary;
- H. whereas the Public Prosecutor's Office also appealed against the acquittal verdicts and Public Prosecutor Edip Şahiner demanded that the acquittals be reversed to artificially prolong the procedure;
- I. whereas following President Erdoğan's statements, the Council of Judges and Prosecutors (HSK), which is responsible for judicial appointments and administration, opened an investigation into the three judges who acquitted Mr Kavala and his eight co-defendants, citing flaws in their judgment; whereas the disciplinary proceedings against these judges appear to have constituted direct interference in their decision-making power and may have had a chilling effect on the independence of all members of the judiciary;
- J. whereas in accordance with Turkey's Law No 7188 on amending the Code of Criminal Procedure and certain laws, a suspect facing charges of terrorism or crimes against the

state can be held in pre-trial detention for no more than two years before their case goes to trial; whereas the investigation file against Mr Kavala under Article 309 of the Turkish Criminal Code was opened on 25 February 2018; whereas the failure of the Turkish authorities to release Mr Kavala on 25 February 2020 therefore constituted a violation of Turkey's Criminal Code;

- K. whereas the failure of the Istanbul Chief Public Prosecutor's Office to conduct a new interrogation following Mr Kavala's rearrest demonstrates that no new evidence had been found to substantiate the charges brought under Article 309 of the Turkish Criminal Code since the *ex officio* release order of 11 October 2019; whereas this lack of new evidence constituted an absence of credible grounds for Mr Kavala's rearrest on the same charges;
- L. whereas Mr Kavala's rearrest is an example of maltreatment, as stated by the Council of Europe Commissioner for Human Rights Dunja Mijatović; whereas the punitive decision to rearrest Mr Kavala constitutes an open violation of both national and international law; whereas the whole process against Mr Kavala has been a succession of judicial manoeuvres and irregularities, marred by political interference, and with the main aim of extending Mr Kavala's detention;
- M. whereas, among other irrational decisions, between August 2021 and February 2022 the Gezi case was merged with the so-called Çarşı trial, whose defendants had also seen their acquittals overturned; whereas the judge presiding over the Istanbul 30th High Criminal Court, Mahmut Başbuğ, who asked for the cases to be merged, was the same judge who signed off the merger at the 13th High Criminal Court after being temporarily appointed to it; whereas later on, in February 2022, the 13th High Criminal Court decided to split the cases once again for no apparent reason; whereas one of the judges on the panel of the 13th High Criminal Court for the trial on 25 April 2022, Murat Bircan, applied to be a candidate for the Grand National Assembly for the ruling party in 2018;
- N. whereas, on 10 December 2019, the ECtHR ruled that Mr Kavala's detention was in violation of Article 5(1) ECHR owing to a lack of reasonable suspicion, of Article 5(4) of the convention owing to a lack of a speedy judicial review by the Constitutional Court, and of Article 18 of the convention, in conjunction with Article 5(1) thereof, owing to the politically motivated nature of his detention, the purpose of which was to exert a dissuasive effect on human rights defenders;
- O. whereas the judgment of the ECtHR pertains to both the charges brought against Mr Kavala under Article 312 of the Turkish Criminal Code for his alleged involvement in the Gezi Park protests, and to the charges brought against him under Article 309 thereof for his alleged involvement in the failed coup of 15 July 2016;
- P. whereas the judgement of the ECtHR demanded that the Turkish authorities secure Mr Kavala's immediate release; whereas there has not been any progress towards his release, despite the binding judgment of the ECtHR in 2019 and two interim resolutions by the Committee of Ministers of the Council of Europe of 2 December 2021 and of 2 February 2022, which launched infringement proceedings against Turkey for refusing to implement the legally binding judgment of the ECtHR and immediately release Mr Kavala, increasing the EU's concerns about the Turkish judiciary's adherence to international and EU standards;

- Q. whereas the Turkish ruling party has been repeatedly eroding rule of law and democratic, and human rights standards, with frequent crackdowns on political opponents and human rights defenders, who are often accused of broadly defined terrorism charges;
- R. whereas after several EU Member States issued statements condemning Kavala's continued detention, Turkey threatened to declare ten of their ambassadors to Turkey *persona non grata*;
- S. whereas Turkey, as an EU candidate country, is required to uphold the highest standards of democracy, including respect for human rights, the rule of law, fundamental freedoms and the universal right to a fair trial, and strict respect for the principle of presumption of innocence and the right to due process;
- T. whereas Turkey has been a member of the Council of Europe since 9 August 1949, which binds it to the ECHR and the rulings of the ECtHR;
1. Condemns, in the strongest possible terms, the recent ruling by Istanbul's 13th High Criminal Court imposing an aggravated life sentence on Osman Kavala after more than four and a half years of unjust, unlawful and illegitimate detention and less than three months after the Committee of Ministers of the Council of Europe launched infringement proceedings against Turkey for refusing to implement the legally binding judgment of the ECtHR; believes that he has been convicted on unjustified charges, for the ulterior purpose of silencing him as a human rights defender and deterring critical voices in Turkey; equally condemns the sentencing of co-defendants Mucella Yapıcı, Can Atalay, Tayfun Kahraman, Ali Hakan Altınay, Yiğit Ali Ekmekçi, Çiğdem Mater Utku and Mine Özerden;
 2. Calls for Osman Kavala's immediate and unconditional release in compliance with the 2019 judgement of the ECtHR, for all charges against him to be dropped immediately and for his rights and freedoms to be guaranteed in full, as well as for the immediate release of the other seven defendants in the case; condemns the fact that Osman Kavala has been continuously deprived of his liberty since October 2017 and calls on Turkey to act in conformity with its international and domestic obligations;
 3. Expresses full solidarity with Osman Kavala, the rest of the defendants in the Gezi trial and their families;
 4. Is deeply concerned about the ongoing deterioration of fundamental rights and freedoms and the rule of law in Turkey, especially after the failed coup; calls on the Turkish authorities to end the judicial harassment of human rights defenders, academics, journalists, spiritual leaders and lawyers;
 5. Calls on Turkey as a Member of the Council of Europe to fully implement all judgments of the ECtHR in line with Article 46 ECHR, an absolute obligation deriving from Turkey's membership of the Council of Europe and which is enshrined in Turkey's constitution; stresses that Turkey's refusal to implement the ECtHR ruling on Osman Kavala's case further amplifies the EU's concerns regarding the Turkish judiciary's adherence to international and European standards;

6. Condemns and deplores the continued efforts and attempts to extend Mr Kavala's imprisonment, despite the absence of any credible or tangible evidence, through a series of complex evasive judicial tactics including the merging and disjoining of case files and constant irregularities in utter disregard for fair trial standards and at the service of a political purpose;
7. Is appalled by the fact that Istanbul's 13th High Criminal Court gave Osman Kavala an aggravated life sentence for allegedly attempting to overthrow the government by force and using violence, in flagrant disregard of the fact that the ECtHR had already specifically dismissed this accusation in its rulings;
8. Welcomes the recurrent decisions by the Committee of Ministers of the Council of Europe demanding Mr Kavala's release, which culminated in its historic launching of infringement proceedings against Turkey through interim resolutions in December 2021 and February 2022 over the country's refusal to abide by the ECtHR's final judgment; notes that the infringement proceedings highlight the seriousness of Turkey's violations of its obligations as a member of the Council of Europe and an EU candidate country; calls on the Committee of Ministers of the Council of Europe to take the necessary steps to ensure that the Government of Turkey implements the ECtHR judgment without further delay;
9. Condemns the Turkish authorities' degrading and inhumane treatment of Mr Kavala, which violates his rights under the ECHR, the International Covenant on Civil and Political Rights and Turkish domestic law, as well as his human dignity under Article 17 of the Constitution of the Republic of Turkey; calls on Turkey to refrain from further intimidation measures against him and to guarantee his human rights as enshrined in the Turkish Constitution and EU and international law;
10. Denounces the decision of Turkey's Council of Judges and Prosecutors to launch an investigation into the three judges who categorically and unequivocally acquitted Mr Kavala; is appalled to see how, on the other hand, the former Istanbul Deputy Public Prosecutor Hasan Yılmaz, responsible for the second indictment against Kavala, was subsequently appointed Deputy Minister of Justice and an *ex officio* member of the Council of Judges and Prosecutors;
11. Expresses deep concern over incidents suggesting clear government interference in the judicial affairs related to the prosecution of Mr Kavala; is deeply concerned about the disregard by the Turkish judiciary and authorities of ECtHR rulings and the increasing non-compliance of parts of the judiciary with the judgments of the Turkish Constitutional Court; insists that the Turkish authorities take all possible measures to address the current dire state of the judiciary and restore its independence in line with Article 6 ECHR, ensuring the impartiality of all Turkish judiciary bodies and protecting them from political interference;
12. Urges the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the Commission and the Member States to continue to bring up the case of Mr Kavala, and all other cases of human rights defenders, lawyers, journalists, politicians and academics, among others, subjected to arbitrary detention with their Turkish interlocutors, and to provide diplomatic and political support for them, including trial observation and case monitoring; calls for a delegation of the European Parliament to attend the trial of Mr Kavala and his co-

defendants, if it goes ahead; notes the possibility to lodge an appeal against the last court ruling at the Turkish Court of Cassation and the Constitutional Court;

13. Calls on the Commission and the Member States to increase the use of emergency grants for human rights defenders and to ensure the full implementation of the EU Guidelines on Human Rights Defenders;
14. Underlines that Mr Kavala and other Turkish citizens in similar situations can be granted political asylum inside the EU if necessary;
15. Notes that with the decision to openly defy the binding rulings of the ECtHR on the case of Osman Kavala and others, the current Turkish Government has deliberately destroyed any hopes of reopening its EU accession process or opening new chapters and closing open ones under the current circumstances; reminds the European Council that any improvement in official EU-Turkey relations and any progress on the positive agenda offered in the European Council conclusions of June 2021, March 2021 and December 2020 should be dependent on a real improvement in the civil and human rights and rule of law situation in Turkey;
16. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy and the Turkish President, Government and Parliament, and requests that this resolution be translated into Turkish.