



OPEN LETTER

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Dear Heads of State of Council of Europe member states,

Next week, the Council of Europe Committee of Ministers will meet to discuss the launch of infringement proceedings, a rarely used procedure available under the European Convention on Human Rights (the Convention), in the case of Osman Kavala. As heads of state of Council of Europe member states, you have a crucial role to play. At stake is the freedom of Osman Kavala, a human rights defender who is arbitrarily detained in Europe's largest maximum security Silivri prison in Istanbul, as a consequence of barely disguised political persecution for over four years, confronted daily with the crushing reality of a judicial system unwilling and unable to serve him justice.

Today, once again a Turkish court has ruled that Osman Kavala is to remain behind bars. This, despite a binding judgment of the European Court of Human Rights (the Court) in December 2019 finding that Osman Kavala's detention for allegedly directing and financing the Gezi Park protests of 2013 and for alleged involvement in the failed coup of July 2016 was in pursuance of an 'ulterior motive', that of silencing him as a human rights defender. The Court found violations of the right to liberty (Article 5.1) and the right to a speedy judicial review of detention (Article 5.4) under the European Convention on Human Rights (ECHR), and that his detention involved a restriction of his rights for an improper purpose (Article 18). The Court held that 'the government must take every measure to put an end to the applicant's detention and to secure his immediate release'.

The latest hearing is part of the new, expanded trial in which Osman Kavala and 51 others, including football supporters, are facing serious criminal charges. This prosecution is another piece of evidence that the relentless misuse of the criminal justice system serves no other purpose but to silence him and crush civil society in Turkey.

Instead of releasing Osman Kavala, Turkey has used all sorts of dilatory measures, unacceptable for a state that claims to abide by human rights. It has repeatedly and falsely claimed the Court's binding ruling had already been implemented; that Osman Kavala's detention is under a different article of the penal code, Article 328 ('espionage') and not the ones that the Strasbourg Court had considered – charges under Articles 309 of the penal code that concern 'attempting to overthrow the constitutional order' and 312 for 'attempting to overthrow the government.' This justification has been repeatedly provided to the Committee of Ministers, while Osman Kavala has been kept behind bars.

In response, the Committee of Ministers has repeatedly reminded Turkey of its obligation to implement the Court's judgment and release Osman Kavala from pretrial detention.

Turkey's persistent refusal to implement the judgment of the Court further exacerbates the impunity for the gross violation of Osman Kavala's right to freedom found by the Court. The Council of Europe

and its member states must do their utmost to ensure that Osman Kavala is released and that the Convention system can function effectively with respect for the binding judgments of the Court.

As parties to the Convention, it is your collective responsibility to protect and uphold the Convention system and its values. I therefore count on your vote in favour of the initiation of infringement proceedings at the Committee of Ministers meeting next week. As you know, every vote counts and an absence or an abstention will de facto count as a vote against opening this crucial procedure. Justice must be done for Osman Kavala, victim of the abject arbitrariness that the Council of Europe is meant to eradicate.

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