



Infringement procedure to be applied by Court in case of *Kavala v. Turkey*^[1]

The European Court of Human Rights (ECHR) is called upon to determine whether Turkey has refused to comply with its judgment in the case of *Kavala v. Turkey* (no. 28749/18), which concerns Mr Mehmet Osman Kavala, a businessman and human rights defender currently in prison. It is the second time the Court has applied the infringement procedure.

The procedure was introduced into the European Convention on Human Rights in 2010 and allows the Committee of Ministers, which has the responsibility under the Convention for supervising the execution of the Court's judgments, to refer to the ECHR the question of whether a country has refused to abide by a final judgment.

On 2 February 2022 the Committee of Ministers considered that “by not having ensured the applicant's immediate release, Turkey refuse[d] to abide by the final judgment of the Court” of 10 December 2019. It thus decided to refer to the ECHR “the question whether Turkey has failed to fulfil its obligation under Article 46 § 1 of the Convention (binding force and execution of judgments)”. [Link](#) to “Interim Resolution CM/ResDH(2022)21” of 2 February 2022.

The ECHR received the formal request from the Committee of Ministers on 21 February 2022.

Mr Mehmet Osman Kavala is a Turkish national who was born in 1957. He is a businessman who has been involved in setting up numerous non-governmental organisations (NGOs). He was arrested in Istanbul on 18 October 2017 on suspicion of attempting to overthrow the government and the constitutional order through force and violence. At the time, the charges against him were linked to the Gezi events and to the attempted coup d'état of 15 July 2016.

In its Chamber [judgment](#) of 10 December 2019 the Court found a violation of Articles 5 (right to liberty and security) and 18 (limitation on use of restrictions on rights) of the European Convention on Human Rights. It took the view that “the authorities had been unable to demonstrate that the applicant's initial and continued pre-trial detention had been justified by reasonable suspicions based on an objective assessment of the acts attributed to him”. It also noted that “this measure had essentially been based not only on acts that could not be reasonably considered as offences under domestic law, but also on acts which were largely related to the exercise of Convention rights”. Under Article 46 (binding force and execution of judgments) of the Convention, it also asked the Government “to take all necessary measures to put an end to Mr Kavala's detention and to ensure his immediate release”. [Link](#) to press release.

Following the Court's judgment, on 18 February 2020 the 30th Assize Court of Istanbul acquitted Mr Kavala on the charge of attempting to overthrow the government (Article 312 of the Criminal Code) and ordered his provisional release. However, on the same day, Mr Kavala was taken into police custody without being able to leave the detention centre on the basis of an arrest warrant issued against him by the public prosecutor of Istanbul on the charge of attempting to overthrow the constitutional order (Article 309 of the Criminal Code). In addition, on 9 March 2020 he was placed in pre-trial detention on the charge of military and political espionage (Article 328 of the Criminal Code). Since then he has been held in Silivri prison.

The Committee of Ministers has launched the infringement procedure under Article 46 § 4 (binding force and enforcement of judgments) of the Convention. The Article allows the Committee to refer

^[1] *Kavala v. Turkey*, no. 28749/18, 10 December 2019.

to the ECHR the question whether a country has failed to abide by one of its judgments. The Committee first has to serve formal notice on the country concerned, which it did in this case in December 2021 ([link](#) to Interim Resolution CM/ResDH(2021)432), and then to adopt a referral decision by a two-thirds majority.

The ECHR will consider the question as a Grand Chamber, its highest judicial formation. The Committee of Ministers and the parties concerned will be able to submit written comments in accordance with a deadline set by the President of the Grand Chamber at 19 April 2022.

If the Grand Chamber finds a violation because of a failure by Turkey to abide by the ECHR's 2019 judgment in the case, it will refer the case back to the Committee of Ministers for consideration of the measures to be taken. A finding of no violation would also lead to the case being referred back to the Committee of Ministers, which then closes its examination.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Neil Connolly (tel: + 33 3 90 21 48 05)

Jane Swift (tel: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.