

**For Immediate Release**

## **Turkey Flouts European Court Judgments**

### ***Council of Europe Committee Should Trigger Infringement Proceedings***

(Istanbul, June 4, 2021) – The Council of Europe should insist that [Turkey](#) comply immediately with judgments from the European Court of Human Rights (ECtHR), or face infringement proceedings, a group of leading nongovernmental organizations working on human rights in Turkey said today.

An upcoming Council of Europe Committee of Ministers meeting on June 7-9, 2021, will review the Turkish government’s failure to implement two leading ECtHR judgments that ordered the immediate release of the human rights defender Osman Kavala and the Kurdish politician Selahattin Demirtaş. Human Rights Watch, the International Commission of Jurists, and the Turkey Human Rights Litigation Support Project urged the committee to use all available measures to require Turkey to rectify its flagrant non-compliance with its obligations, the court judgments, and the committee’s decisions on this matter.

“The Committee of Ministers should be using every means it has to push Turkey to implement the Kavala and Demirtaş judgments,” said [Aisling Reidy](#), senior legal adviser at Human Rights Watch. “That means that the committee should be prepared to trigger infringement proceedings against Turkey if it persists with its defiance of the European Court’s binding judgment in favor of Kavala, and to call for the immediate release of Demirtaş with a commitment to escalate measures if it does not happen.”

The three groups repeated [their March 2021 call for the committee to commence infringement proceedings against Turkey](#) for flouting its decisions requesting Kavala’s release and urged the committee to issue a second decision for Demirtaş’s immediate release. The committee should also make clear that if Demirtaş is not released, it will take further action at its September session.

The [ECtHR ruled on December 10, 2019](#), that by holding Kavala in pretrial detention since November 2017 and prosecuting him on the basis of his human rights activities, the Turkish authorities had “pursued an ulterior purpose, namely to silence him as a human rights defender.”

Similarly, the [ECtHR ruled on December 22, 2020](#), that by holding Demirtaş in pretrial detention since November 2016 and prosecuting him for his activities and speeches protected under the European Convention on Human Rights (ECHR), the Turkish authorities had pursued an ulterior purpose of preventing him from carrying out his political activities, depriving voters of their elected representative, and “stifling pluralism and limiting freedom of political debate: the very core of the concept of a democratic society.”

In both cases, the Court found that by using detention for political ends, Turkey had violated the right to liberty and other rights, and had misused the discretion given to governments to impose limitations on rights for illegitimate purposes (articles 5 and 18 of the ECHR respectively). The Court took the rare step of ordering their immediate release.

Despite the fact that the landmark judgments are legally binding, the Turkish authorities have snubbed the Strasbourg court and ignored the Committee of Ministers' decisions calling for the men's release.

“Turkish prosecutors and judges have sought to circumvent the authority of the European Court by adopting the tactic of opening new criminal proceedings against Kavala and Demirtaş based on the reclassification of the same facts,” said Helen Duffy of the Turkey Human Rights Litigation Support Project “This cynical non-compliance with the court's judgments requires a robust response from the Committee of Ministers.”

On May 21 when the retrial of Kavala for his alleged role in the 2013 Gezi Park protests opened, Turkish authorities merged that case with another concerning his alleged involvement in the 2016 coup attempt and espionage. The Istanbul 30<sup>th</sup> Assize Court hearing the case extended his detention. The next hearing against Kavala is scheduled for August 6.

In Demirtaş's case, Ankara 22<sup>nd</sup> Assize Court on April 19 merged an existing case against him with a new case before it despite the fact that it involved the same or similar facts, which the European Court had held consisted of peaceful political speeches and activities protected under the ECHR. In the new case, the facts used as the evidence have been reclassified under different charges.

The indictment now charges Demirtaş and 107 co-defendants with crimes that include attempting to undermine the unity and territorial integrity of the state, murder, and robbery, all on the basis of tweets and political speeches they made in the period before deadly protests that took place in southeast Turkey from October 6-8, 2014. Demirtaş's co-defendants include current and former members of parliament from the Peoples' Democratic Party (HDP). The first hearing of the merged cases against Demirtaş took place on April 26. The next hearing is scheduled for June 14.

The Committee of Ministers has previously addressed the Turkish government's efforts to circumvent the ECtHR judgments by bringing new criminal proceedings against Kavala and Demirtaş. [In March](#), the committee decided that Kavala's “continuing pretrial detention and the pending proceedings with respect to the charges regarding both the Gezi Park events and the coup attempt, despite the Court's conclusion that both charges were not based on a ‘reasonable suspicion’ ... reinforce the conclusion that the national authorities, including the courts, are failing to take into account the European Court's findings.” The committee stressed that this undermined Turkey's obligation under article 46 of the ECHR to implement the court's

judgments.

With regard to Demirtaş, the Committee of Ministers said in March: “While taking note of the authorities’ submissions that the applicant’s current detention falls outside the scope of the Grand Chamber judgment ... and also that the events and charges for his current detention differ from those concerning his initial detention, [the Committee] considered that these arguments have been already examined and rejected by the Court.”

The repeated orders by Turkish courts to prolong Kavala’s and Demirtaş’s unlawful detention blatantly disregards the European Court’s directive for their immediate release and the Committee of Ministers’ decisions reiterating the point, the three groups said.

“Not only does the non-implementation of these judgments show Turkey’s failure to respect its international law obligations, but it also represents a serious challenge to the Council of Europe system for implementation of European Convention on Human Rights,” said Róisín Pillay from the International Commission of Jurists “This matter does not only have a serious impact on Kavala’s and Demirtaş’s rights, but also on the Convention system more broadly. The Committee must therefore not delay in ensuring this challenge is faced in line with the procedure provided under the Convention.”

The Committee of Ministers has the authority to take infringement proceedings against a Council of Europe member state that refuses to carry out European Court judgments. It was used for the first time in 2017 when the government of Azerbaijan repeatedly refused to secure the unconditional release of a wrongfully jailed opposition politician, Ilgar Mammadov.

Infringement proceedings are provided for under article 46/4 of the ECHR. Opening these proceedings requires the vote of two-thirds of the Committee of Ministers. Once the process is triggered, the case reverts to the ECtHR for a further opinion on whether the state has met its binding obligation to comply with the judgment. If the court confirms that Turkey has failed to carry out the ruling, the Committee of Ministers may then take additional measures, including ultimately suspending Turkey’s voting rights or membership of the Council of Europe.