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POLICY TURKEY

"The Kavala decision of the ECtHR is still valid and should be implemented"

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Boriss Cilevics, Turkey rapporteur of the Parliamentary Assembly of the Council of Europe, said that they are hopeful that the legal system in Turkey will find a suitable solution to comply with the ECtHR's Osman Kavala decision.

Turkey rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) Monitoring Committee stated that the decision of the European Court of Human Rights for the detained businessman Osman Kavala is still valid and should be implemented, and they are hopeful that a corresponding decision will be reached in the higher courts that will handle the Kavala case. they recorded.

The contacts that took place after Kavala was given an aggravated life sentence are important in terms of the violation process initiated for Turkey by the Committee of Ministers of the Council of Europe.

Rapporteurs British John Howell and Latvian Boriss Cilevics answered DW Turkish's questions after their contacts in Ankara and Istanbul.

Reminding that they had been in Turkey in March before, Howell noted that they will first verbalize their observations next week and then prepare a written report in more detail after these contacts after the "heavy sentence" regarding Kavala.

Stating that they came together with state officials, civil society representatives, lawyers and the families of the detainees as part of the visit, Howell reminded that at this stage, the case regarding Kavala is ongoing in two separate branches, both the judicial process in Turkey and the ECtHR. Howell pointed out that the Kavala case could be handled at the Supreme Court and then perhaps the Constitutional Court.



Reminding that Azerbaijan implemented the ECHR decision without a sanction decision in the violation process initiated against it, and the question whether they expect a similar step from Turkey, Cilevics replied as follows:

"Yes, the violation process was started for Azerbaijan for the first time. Then Ilgar Mammadov was released and the violation process ended. We are very hopeful that the Turkish legal system will also find a suitable solution. Because no other solution is possible. The solution can only be found by Turkish law."

Cilevics said that from now on, there will be stages of higher judicial bodies such as the Supreme Court of Appeals and the Constitutional Court, adding, "According to the ECtHR decision, Kavala should not be in prison. How to provide the legal framework for this is not our topic."

Visit to Kavala not allowed

Meanwhile, the Ministry of Justice did not give permission for the rapporteurs to visit Kavala.

In a written statement, Cilevics and Howell said, "We are very sorry that we were not able to visit Osman Kavala and the others who were arrested. However, we noted that they did not have any complaints due to their conditions in prison."

On the other hand, two rapporteurs also met with CHP's Canan Kaftancıoğlu in Istanbul and got information about the latest status of her file.

The 3rd Penal Chamber of the Supreme Court of Appeals upheld the sentence of 4 years 11 months and 20 days in prison for CHP Istanbul Provincial Chair Canan Kaftancıoğlu on charges of "insulting a public official", "publicly insulting the State of the Republic of Turkey" and "insulting the President". In addition to his prison sentence, Kaftancıoğlu was also given a political ban.

Erdogan's words about the ECHR

So, after the sentence given regarding Kavala, as claimed by President Tayyip Erdoğan, is there no more work for the ECHR?

Before his departure to Saudi Arabia, on a question about Kavala, Erdogan said, "They do not know international law either. There is no more work for the ECHR, it's over. Why is it finished? Because he was convicted here. Since he was convicted, this matter is now with the ECHR. It has nothing to do with it. The ECtHR will take care of it, but say it was convicted, it will take this matter off the table now," he said.

Cilevics said that they also discussed this issue with Turkish officials, but they did not agree on this issue and said:

"Because the ECHR said that the evidence presented against Kavala was not strong enough. Kavala was acquitted first in 2020, but was arrested again on the same day according to another article of the penal code. However, this was done based on the same evidence. Technically yes, maybe it's different. "An accusation is an accusation, but in fact, this last heavy sentence given by the court is based on the same evidence, which was deemed insufficient by the ECtHR. I am aware that it is a very complex issue, but the ECHR's decision is still valid and should be applied."

Cilevics also emphasized that the decisions of the ECtHR are binding not only for the governments of the member states, but also for their courts.



Osman Kavala

Photo: Kerem Uzel/dpa/picture alliance

What happened in the process related to Kavala?

With the decision of the Istanbul 13th High Criminal Court on April 25, in the Third Gezi Case, Kavala was acquitted and released on the charge of "espionage", and sentenced to aggravated life imprisonment for "Attempting to Overthrow the Government of the Republic of Turkey or to prevent it from fulfilling its duty". had ruled.

On the other hand, 7 pending defendants, including Mücella Yapıcı, Can Atalay and Tayfun Kahraman, were sentenced to 18 years in prison each for the crime of "aiding the attempt to overthrow the Government of the Republic of Turkey or attempting to do its duty", and it was decided that they would be arrested.

The fact that Kavala was sentenced to life imprisonment despite the decision of the European Court of Human Rights (ECHR) for violation of rights increased the possibility of the Council of Europe to impose sanctions on Turkey.

The ECHR, in its decision dated 10 December 2019, in the case regarding Kavala's detention conditions, concluded that Kavala was "held in prison for unlawful reasons and to be silenced" and ruled that Kavala should be

"immediately released" in order to remedy this violation. The decision of the ECtHR was also finalized in the Grand Chamber.

However, after Kavala was not released despite this decision, Turkey was included in the audit process of the Committee of Ministers of the Council of Europe on the grounds that it did not comply with the ECtHR decisions.

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