

**3.5 YEARS
OF INJUSTICE**

Turkey is going through extraordinary times when we encounter a number of cases that can neither be considered as rule of law, nor can fit into the concept of justice. Practices that do not only violate fundamental rights and the notion of justice, but also universal legal norms and even applicable laws and established judicial procedures have become daily occurrences.

Osman Kavala's detention story has a special place in the recent judicial chaos and flagrant violation of human rights. It is a special case that marks the politicization of the judiciary and its transformation into an apparatus of vengeance. It is an exemplary case in terms of its motive, merits, and allegations.

It is a telling example of inventing - in fact the failure to invent - an attributable criminal offense for individuals who "needed" to be punished. It is an illustrative example of how opinions, delusions and presumptions are considered sufficient for laying charges, even without the need to show evidence. It is an example of complete disregard for simple rules of logic, let alone fundamental rights and legal norms.

Osman Kavala has been detained for months without knowing what he was accused of. Then, he was kept in prison uninterruptedly by bringing different cases against him through indictments that turned into bad examples of legal documents. While unfounded criminal charges without any concrete evidence fell apart one after another, either new ones were produced or we have encountered an insistence on absurdity.

Kavala was charged with violating Article 312 of the TCC as the financier and organizer of the Gezi Events, which were stated in the official records of the state as events that "cannot be organized from a single center," and was acquitted of this charge. The allegation of "staging a coup" made under the Article 309 also fell apart, and two release orders were issued. When these attempts failed, Kavala was charged with espionage under Article 328 this time.

The unchanging consequence of the trials, which continue under almost all articles of the Turkish Criminal Code without any concrete evidence, is Kavala's deprivation of his liberty and separation from his loved ones for years. It is aimed to continue the persistent unlawfulness and irrational forced efforts with the Gezi Trial, which will be reopened and turned into a mass trial.

This incident, which has been filled with distorted information and suspicions in terms of those who were involved, the allegations, and the practices since the investigation phase, has already become a case of embarrassment both nationally and internationally. It has turned into Turkey's main legal scandal, which is constantly being questioned in the international arena.

This text is a brief summary of how Osman Kavala has been subjected to unfounded allegations, unlawful, and illogical procedures. The variety of accusations, all under a dubious investigation file yet grounded on different articles of the TCC, and the insistence on reopening cases that legally fell apart clearly point to the real motive behind.



OSMAN KAVALA
SAVUNMA YAPIMOR
GEZİ DAVASI
23.06.2019

Murat Başol

What happened?

The letter, which included the request for Kavala's detention, alleged that he was the organizer and financier of the Gezi Events. However, while the investigation file was hidden from detained Kavala and his lawyers through restriction orders, some information was serviced to the media outlets.

Submitted 1.5 years later on **19 February 2019** and admitted on **4 March 2019**, the indictment called for life imprisonment of Kavala and other defendants. Most of the so-called pieces of evidence were interception records, which did not even include any indication of crime.

On **18 October 2017**, Osman Kavala was taken into custody at Atatürk Airport where he returned from Gaziantep. On **1 November**, he was ordered detention on the charges of "attempting to overthrow the constitutional order" and "attempting to overthrow the government."

On **16 November 2018**, some executives of Anadolu Kültür, founded by Kavala, were taken into custody; members of the Taksim Solidarity, who were previously acquitted, were also summoned to testify; and Civil society worker Yiğit Aksakoglu was arrested.

On **22 May 2019**, in response to his individual application, the Constitutional Court ruled that Osman Kavala's detention "does not violate" his rights by a majority of votes, despite the dissenting opinion of its Reporter Judge. The requests for release repeated on **24 June, 18 July, and 9 October 2019** were dismissed.

On **10 December 2019**, the European Court of Human Rights announced its judgment regarding Osman Kavala's individual application, ruling for violation. ECHR held that Kavala had been detained on political grounds without reasonable doubt, and called for his immediate release.

The Public Prosecutor's Office, which issued its opinion on **6 February 2020**, repeated the accusations in the indictment, insisting on demanding an aggravated life sentence for Osman Kavala, Mücella Yapıcı, and Yiğit Aksakoğlu.

Kavala was re-arrested on the same day even before leaving the Silivri Prison premises. The Chief Public Prosecutor's Office announced that he was taken into custody as part of another investigation, for which an ex-officio release order had previously been issued. The President of Turkey described the decision of acquittal as a "maneuver".

Appeals were lodged in April and May against the detention order for Kavala. On **7 April** and **28 May**, the Court ruled for the continuation of Kavala's detention, using the exact same reasoning pattern, cut from the same template.

During the hearings held on **24 December 2019** and **28 January 2020**, the judgment of the ECHR was not executed on the grounds that it was not "finalized". Bar associations protested instances such as dubious witnesses being heard in secret hearings, hidden from the defense counsel.

In the hearing held on **18 February 2020**, the Istanbul 30th Assize Court unanimously ruled for the acquittal of Osman Kavala and some of the defendants and separated the files of the defendants who were abroad.

On **19 February 2020**, Osman Kavala was re-arrested under Article 309 of the TCC. Later, the case was "fortified" by issuing another detention order under Article 328 of the TCC. Kavala was never questioned or even brought before the Court.

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- On 25 May 2020**, a request was submitted to the Committee of Ministers of the Council of Europe, stating that the judgment of the ECHR on the immediate release of Osman Kavala had not been executed.
- The Constitutional Court started to review Kavala's individual application on **24 September 2020**, and five days later, on **29 September 2020**, it announced that the decision meeting on Kavala was postponed.
- On **8 October 2020**, Istanbul 36th Assize Court admitted the new indictment. The Court ruled that the detention of Osman Kavala shall continue and that the hearing shall be held on **18 December 2020**.
- On **12 May 2020**, Turkey's appeal against the judgment of the ECHR finding a violation was dismissed. It has been finalized that the detention of Osman Kavala constituted a violation of rights and was politically motivated.
- On **3 September 2020**, the Committee of Ministers of the Council of Europe called for the execution of the judgment of the ECHR finding a violation in Kavala's application and the immediate release of Kavala.
- On **29 September 2020**, the Istanbul Chief Public Prosecutor's Office submitted an indictment to the Istanbul 36th Assize Court, demanding the conviction of Osman Kavala under Articles 309 and 328 of the TCC.
- On **3 December 2020**, the Committee of Ministers of the Council of Europe issued an interim decision that Kavala should be released immediately and that the Constitutional Court should examine the file in accordance with the judgment of the ECHR without further delay.

Reviewing Kavala's individual application, the Constitutional Court ruled on **29 December 2020** that his rights to personal liberty and security under Article 19 of the Constitution of Turkey were not violated. The decision was issued by 8 to 7 votes.

On **28 January 2021**, the Istanbul 30th Assize Court ruled that the Gezi Trial, which will be reopened after the decision of overturning, shall be heard in Çağlayan on **21 May 2021** at 10.00.

Another development, which appeared to have no direct relation with the trial, took place on **20 March 2021**. The ownership of Taksim Gezi Park was transferred from the Istanbul Metropolitan Municipality to a foundation.

Again, on **28 April 2021**, the Supreme Court overturned the decision of acquittal issued in another trial concerning 35 defendants, including the members of the Çarşı group. The reasons for the decision of overturning included the proposal to consolidate the trial with the main Gezi Trial.

On **22 January 2021**, the 3rd Penal Chamber of the Istanbul Appellate Court overturned the decision of acquittal issued by the Istanbul 30th Assize Court in the Gezi Trial in 2020. It referred the case to the relevant court to be reopened.

On **5 February 2021**, in the Kavala trial, the 36th Assize Court ruled that the detention of Kavala shall continue and that the file shall be consolidated with the Gezi Trial, which was heard in the Istanbul 30th Assize Court.

On **28 April 2021**, even though it had previously been separated from the main file when the decision of acquittal was issued, the file concerning 7 defendants who are abroad, including Can Dündar and Memet Ali Alabora, was consolidated with the main Gezi file.

THESE TRIALS DO NOT HAVE ANY LEGITIMATE GROUND

Any lawsuit or accusation must be in compliance with the statutes in place and the law; and it must have reasonable and conscientious grounds. To pronounce someone guilty of an offense, an explicit description of the crime would be asked. There is to be no crime without law. The charges brought against such an individual must be proven on the basis of legitimate and credible evidence, and the evidence must be collected through lawful means. None of them exists in the series of investigations and trials leading Osman Kavala to be held in prison unlawfully for years!

In the case of Osman Kavala's detention, the highest-ranking political actors were often witnessed making public accusations and showing conduct that would influence the judiciary. Guided by politicians and members of the judiciary, media outlets generated a substantial amount of disinformation. The rules of law, procedural rules, and even court decisions went unenforced. When considered in this light, this process stands out as a political punishment process that lacks legitimacy and legal grounds, yet demonstrates a clear motive. This is no longer a claim but a fact that has been proven by court decisions.

The lack of legal basis in this case is clearly indicated in the reasoning for dissenting vote of the judges of the Constitutional Court who disagreed with the decision issued by majority vote that the rights of Osman Kavala have not

been violated. For example, Zühtü Arslan, the President of the Constitutional Court, says, "even a simple suspicion about the existence of a crime could not be raised, let alone a strong indication." Judge Engin Yıldırım says, "In the present case, the fact that the applicant was released twice and placed in pre-trial detention three times with allegations based on almost the same fact without providing any important new pieces of evidence that will raise strong suspicion is similar to a Kafkaesque legal spiral."





Gezi Davası 18 Temmuz 19
Osman Kavala

WHAT IS “REVALUATION”? WHAT PURPOSE DOES IT SERVE?

The most dramatic defect that led to the trial and investigations that kept Osman Kavala in prison over a time period that defies both the law and reason is the grounds used for justification. There was an explicit confession on this matter in the Gezi Trial indictment, without any need to refer to any outside source, “that this investigation had been initiated and steered by individuals who were identified to be members of the FETO/PDY armed terrorist organization”. Muammer Akkaş, who had initiated the investigations that the charges

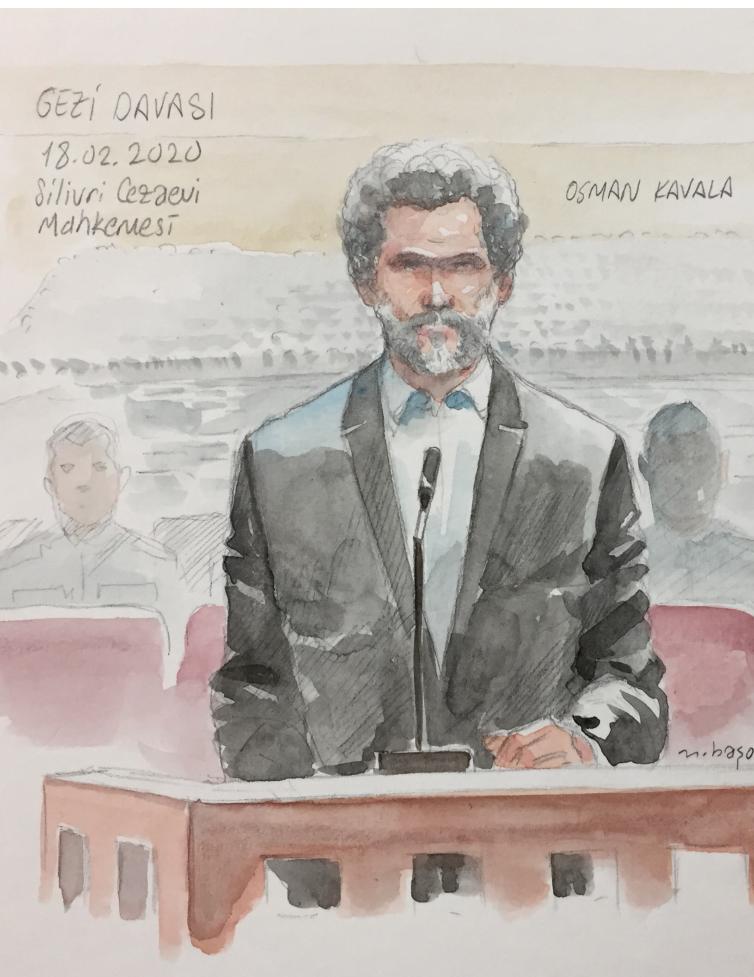
brought against Kavala were based upon, was also the prosecutor of the 17-25 December investigations, and is still at large. The judges who ordered wiretapping and extended the authorizations for investigation are either FETO suspects or are at large. The majority of the law enforcement officers who carried out interception and surveillance have been accused of being members of the same organization. What is even more striking is that these individuals are on trial just for doing that.

CRIMINAL OFFENSES AND EVIDENCE THAT CANNOT BE INVENTED

The so-called evidence of the allegations that were used to justify the ongoing detention of Osman Kavala is full of obvious illogicality and even absurdities. For example, it has repeatedly been proven that Kavala, who allegedly met Henri Barkey, was not in the same city as him during these periods of time, let alone meeting with him. Being around a cell tower shared by millions of people

was presented as evidence. Pages upon pages of wiretapping records did not include even a single sentence that would support any allegation.

The documentaries on a removable drive were presented as evidence and the basis for the allegation that Kavala disclosed the classified documents and information of the country. Some of these documents were never shot, and those that were shot were screened at various events, including Antalya Film Festival. Furthermore, none of them are currently being investigated. The indictment includes the absurdity of considering the fact that Kavala obtained released documentaries for the purpose of watching them as an offense.



Despite all the efforts forced, the attempt to forge a connection among the defendants themselves and between the defendants and the alleged crimes in the Gezi Trial, for which the most severe sentences were demanded, has failed. While various Gezi trials ended in acquittal, different panels of judges always said the same thing: There is no sufficient evidence to prove the existence of an offense. Now, despite the lack of evidence and the inability to forge a connection, the decisions of overturning issued one after another say, "Find more evidence. If there is not any, invent one. If you cannot find any evidence, search for it over and over again."

THE LAW AND THE PROCEDURE ARE NULL AND VOID

This process, which cannot possibly lead to a lawful, conscientious, or reasonable conclusion with unsubstantiated charges, inevitably continued with violations of laws and procedural rules in each phase. A sentence noted in the record that the “ECHR judgment was not yet final” despite the fact that this was not included in a letter sent by the Ministry of Justice; individuals acting as witnesses and even their names turning out to be false; hearings that were rushed and hidden from the defendant and his attorneys; and decisions that looked like they were cut from the same template, and could not even hide clerical errors after copying and pasting a text were encountered.

The developments after the hearing that was held on 18 February 2020 and ended in a decision of acquittal involved many legal scandals and proved that the trial proceeded with clear political instructions. An announcement was made at the highest level of government that the decision was not welcome. The decision was described as a “maneuver” and even a “coup”. It was announced that the High Council of Judges and Prosecutors would launch an investigation against the panel of judges. While he was being released and was in the transport vehicle, Kavala was re-arrested based on another investigation as part of which a release order had previously been issued.



A LEGAL SCANDAL THAT GOES BEYOND BORDERS



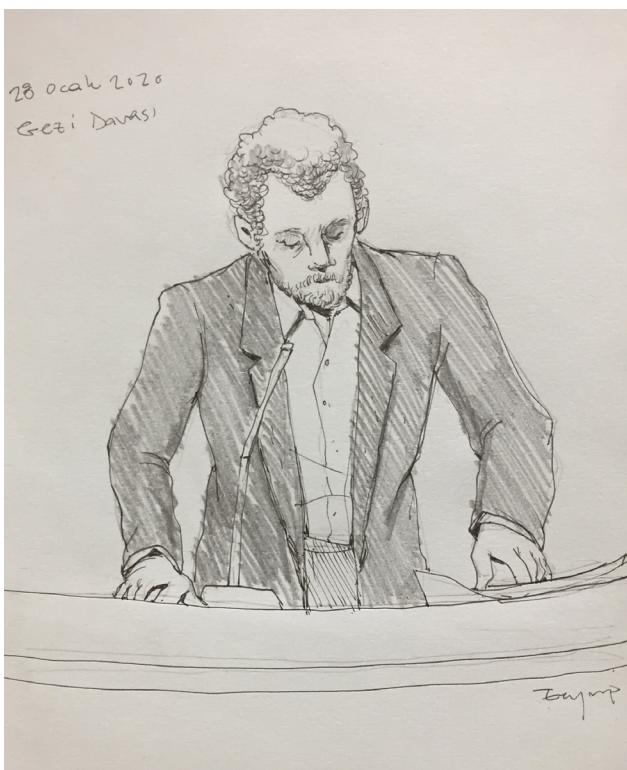
The fact that Osman Kavala is kept in prison without being incriminated and without any evidence for the invented charges has become a legal scandal that goes beyond the borders of Turkey. The ECHR ruled that Kavala has been subjected to a severe violation of rights and punished for political reasons as a result of a trial in which Turkey made every effort to prolong the detention and made excuses to avoid executing the judgment of the ECHR. The judgment that Turkey could not execute turned into a diplomatic crisis.

The judgment of the ECHR and Turkey's failure to execute it and resort to delaying tactics were also reviewed by the Committee of Ministers of the Council of Europe. They have become one of the main questions of the EU, the USA, and nearly all international platforms. The highest-ranking authorities called for the release of Kavala. However, not only laws, but also international obligations continued to be violated by keeping Kavala in prison.

NO NEED TO READ BETWEEN THE LINES

The process, which lead Osman Kavala to be kept in prison unlawfully for years and has been carried out for “political reasons” as stated in international judicial decisions, is brought up with the case that is being reopened. All the allegations against Kavala are being consolidated with the “new” Gezi Trial. The Gezi Trial, which is being reopened eight years later, is turning into a mass trial that will concern large groups and be used in the punishment and vengeance operations of the government.

This trial, which had been shaped by the political power from its allegations to its clear motive, had been a scandal rather than a legal matter since the very beginning. The fact that a charge on which several decisions of acquittal were issued will be brought again with almost the same absurd justifications and non-existent evidence is nothing but an insistence on continuing the clear and severe violation of rights. On the contrary, it is aimed to expand the scope of unlawful practices and spread and deepen them.



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PUT AN END TO THIS

As this brief and limited summary strikingly demonstrates, each phase of this case is riddled with injustices, inconsistencies, and illogical and unlawful procedures. It has been proven over and over again that this systematical insistence on unlawfulness, which has Osman Kavala at its center, has no legitimate grounds. This was repeated by clear judgments issued as a result of national and international judicial processes.

The judgment of the ECHR, which was finalized on 12 May 2020, turned the violation of rights into a definite fact. Repeating this unlawfulness, which cannot be legitimized even by instructed courts, and reopening the case on which it was based in violation of applicable laws and procedural rules have become a source of embarrassment not only for the government and the judiciary but also for the country as a whole.

It is a particular irony that this trial has been reopened while the Human Rights Action Plan, financed by the EU, was announced and will allegedly be implemented. It is imperative to urgently put an end to this forced case, which has been persistently pursued against the truth, conscience, and the law and which has already left a permanent stain on Turkey's track record in justice.

Osman Kavala must be released immediately, and all the investigations that were unlawful right from the beginning must be cleared off, along with their consequences. Put an end to the misery that you put Osman Kavala and his loved ones through and the embarrassment that you cause to the entire country.