

THE CASE OF OSMAN KAVALA

Osman Kavala is the Chairman both of Kavala Holding and of Anatolian Culture Foundation. He has been involved as a founding member or an executive or advisor in many civil society organizations such as Open Society Foundation, TESEV, TEMA Foundation, Turkish History Foundation, Diyarbakir Political and Social Research Institution, Turkish Cinema and Audiovisual Culture Foundation.

What happened? He was detained on 18 October 2017 for allegedly being involved both in the so-called “17-25 December Plot” and in the July 15th coup attempt. He was then immediately arrested even without his statement being taken at the Istanbul Chief Public Prosecutor’s Office. The Istanbul 1st Criminal Judgeship of Peace found of him guilty of “attempting to subvert the constitutional order” (Article 309 of Turkish Penal Code [TCK]) and “attempting to topple the government by force and violence” (Article 312 of the TCK).

Investigation: Kavala’s lawyers filed an appeal against his detention without trial. It was dismissed. Referring to the Constitutional Court’s ruling about Erdal Tercan that his detention without trial has been a violation of the right to personal freedom and security, his lawyers made a new appeal, which was also dismissed. The case file has been ordered confidential. However, some statements said to be given by Kavala at the police station were reported by the pro-government newspaper SABAH. Osman Kavala has filed appeals both to the Constitutional Court and to the European Court of Human Rights for his protracted detention.

Notwithstanding that Osman Kavala has been in prison since November 1st 2017, his indictment is yet to be issued, meaning that he has been under detention for almost one year without knowing what charges have made against himself.

JUDGING THE JUDICIARY

Having examined the investigation launched against Osman Kavala, our “Shadow Court” ruled the following:

SUMMARY OF JUDGMENT

October 24th 2018

1. We have made no judgment about the prosecutor and the judge, who, respectively, requested and ordered that Kavala be imprisoned, because **his indictment is yet to be issued** and we still do not know what tangible evidence have been put forward for his detention.

2. **It is, however, unacceptable that he has been in prison for almost one year** even without knowing what charges have been made against himself.

His protracted detention even without being indicted means that Kavala has been punished beforehand. It seems that ordering months- or years-long detentions has become habitual and usual for Turkish judiciary. That is legally unacceptable.

Everyone has the right to a trial within reasonable time. However, the Law of Criminal Procedure has no a clear definition of “reasonable time”. According to the legal opinions released both by the Constitutional Court (AYM in Turkish acronym) and the European Court of Human Rights (ECHR), “reasonable time” is evaluated by three criteria: **complexity of the case, the defendant’s attitudes and behaviors, and the judicial and administrative officers’ attitudes and behaviors**. The ECHR states that reasonable time limit is aimed not at accelerating the trial but at reducing the length of detention. Osman Kavala has been under detention for one year without being indicted, meaning that no reasonable time limit is set for him.

3. As the investigation has proceeded, President Recep Tayyip Erdogan said that

“Those who flatter him as a NGO representative or press member or good citizen should know that they cannot deceive us. That man is the Turkish Soros, whose clandestine collaborations with those plotting against us have been exposed. He funded the Gezi Park events, not to mention the rest. Do not try to deceive us.”

What Erdogan said was **“attempting to interfere in the judicial process”**, and thus constituting a crime. (Article 288 of Turkish Penal Code).

The reason why the court rejected the release appeal filed by Osman Kavala is as follows: *“The nature of charges made against Osman Kavala requires him to be kept under detention. The time he has spent under detention is proportional to the lengths of sentence stated by the relevant law”*. That reason is neither legal nor lawful.

4. The Newspaper SABAH published some excerpts allegedly to have been taken from his statement. Could the information have been obtained if they had not been leaked directly by the Prosecutor’s Office? That constitutes the crime of **violation of confidentiality**, pursuant to the Article 288 of Turkish Penal Code. The Article 288(4) states that if the crime is committed by a public officer **abusing his/her position**, the sentence to be imposed will be harsher.

REASONED JUDGMENT

The case of Osman Kavala bears the characteristics observed also in the other investigations.

Firstly, that the investigation has been ordered CONFIDENTIAL violates his right to know what charges have made against himself. However, some excerpts alleged to have been taken from his statement were published both in the Newspaper SABAH and on the www.sabah.com.tr website. Who leaked them?

Secondly- and more importantly- it forces people to impose self-censorship.

The detention of Kavala, who is known as pro-democracy businessman, causes pro-democracy individuals to withdraw from politics.

THE MOST IMPORTANT POINT:

Kavala has been in prison for one year. Neither does he or his lawyers nor do we know what charges have been made against him because the investigation has been ordered CONFIDENTIAL. **One year was already stolen from his life.**

Well, how long would it take? 2 or 5 years? Maybe 10 or 20 or 30 years?

Never say never. Is it that easy to steal one's life?

YES.

One may file a criminal complaint against the prosecutor for "abusing his/her position" that requires a sentence of imprisonment from three months up to one year, pursuant to the Article 257 of Turkish Penal Code.

It means that you may steal one's life and, if found guilty, get away with one year in prison at most.

Who is responsible for that mess?

The police officers who detained Osman Kavala?

The prosecutor who requested that he be arrested?

The judge who ordered he be arrested?

The judge who ordered the investigation confidential?

The "Council of Judges and Prosecutors" required to review the judicial processes?

The government which reshaped the structure of the Council in such a way that it would completely be under the Ministry of Justice's command?

The government which abolished judicial review of any decision it would make?

The government which abolished judicial review of executive branch?

The Police officers, prosecutor, judge and government itself are all complicit in the crime defined in the Article 309 of the Constitution: attempting to change the Constitution BY FORCE AND VIOLENCE.

Kavala may not have been inflicted VIOLENCE, however, he has been kept under detention by FORCE.

Kavala's constitutional rights and freedoms have been violated by the State, which has monopoly over the use of force. The State itself is therefore a complicit in that crime.

WE WILL GO ON MAKING JUDGMENTS ON THE BASIS OF LEGALITY.