

## THE CASE OF GEZI

### **DEFENDANTS:**

Mehmet Osman Kavala  
Ayşe Mücella Yapıcı  
Ayşe Pınar Alabora  
Can Dündar  
Çiğdem Mater Utku  
Gökçe Yılmaz  
Handan Meltem Arıkan  
Hanzade Hikmet Germiyanoglu  
İnanç Ekmekci  
Ali Hakan Altı  
Memet Ali Alabora  
Mine Özerden  
Şerafettin Can Atalay  
Tayfun Kahraman  
Yiğit Aksakoğlu  
Yiğit Ali Ekmekci

### **BACKGROUND:**

The Gezi Revolt began on May 28<sup>th</sup> 2013 as a reaction against the Taksim square pedestrianization project and the project of building of a shopping mall at the Park. The revolt then evolved into a nationwide and a more comprehensive social movement, in which non-traditional ways of protest such as civil disobedience, non-violent demonstration and humor have manifested themselves in many forms. It has lasted for almost one month, though with decreasing intensity after the first two weeks. Police violence during the revolt has caused deaths, permanent injuries and health problems and limb loses.

### **EVENTS:**

As the fifth anniversary of the Revolt is approaching, we have seen that the indictment issued eventually at the end of the first year of his prison term against the detainee businessperson Osman Kavala have been broadened so far as to include many dissident persons and civil society organizations, primarily the Taksim Solidarity and its constituents. The indictment claims that the defendants organized the Gezi “Insurrection” based on methods theorized and practiced respectively by Gene Sharp and the OTPOR. They have also been accused of financing the protests with the help of George Soros and national/international organization. Osman Kavala has been charged with assuming a mediating role in receiving financial support. It is also stated that the suspects have been involved in the revolts in Middle East and Europe. The indictment requests the defendants be sentenced to aggravated imprisonment, pursuant to the Article 312 (“Subversive activities against the government”) of the Turkish Penal Code (TCK hereafter).

Those who were involved in the Gezi Revolt have from the very beginning been targeted and demonized both by the government itself and the media. President Recep Tayyip Erdogan has made statements that would pre-determine the content of the indictment.

## **JUDGING THE JUDICIARY**

### **VERDICT**

**27.03.2019**

- 1) The use of detention not as a precaution, but as a means of punishment violates the presumption of innocence. That undermines the function of the courts.
- 2) The 657 page indictment fails to substantiate the relation between the incidences and the suspects. Accusations are based on ill-founded presumptions.
- 3) The rule of law has been systematically and gravely violated. The defendants are treated as captives. Their detention and indictment are nothing but “unlawful deprivation of personal freedom” and “slander”, respectively.
- 4) The right to remain silent is being infringed. Use of that right is considered to be an offense. That is a violation of many basic rights, including the right to fair trial.
- 5) The plaintiffs involved in the lawsuit and the pro-government media outlets have committed the crime of “attempting to influence a fair trial” stated in the Article 288 of TCK by making statements/covering news aimed at creating adverse an adverse opinion/judgment/impression about the suspects.
- 6) It can be said that the prosecutor has committed the crime of “misconduct” by issuing an indictment based not on tangible evidence but on manipulations and ill-founded comments.
- 7) The article 22 of TCK has been infringed by eavesdropping the defendants’ phones and surveillance of their other communications far beyond a reasonable duration. That is a crime stated in the Article 132 of TCK.
- 8) The indictment violates both the right to freedom of expression and right to peaceful assembly by charging the defendants with being involved in lawful civil disobedience demonstrations and meetings.

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### **JUSTIFICATION**

#### **1) DETENTION AS A MEANS OF PUNISHMENT**

Detention should be used as a precautionary measure in case that there is the risk of absconding and tampering with evidence, provided that the presumption of innocence is

observed. Doing otherwise leads inevitably to the violation of international treaties and the Constitution-protected rights.

The case of Osman Kavala exemplifies the latter. He has remained in prison without being indicted for one year. His right to presumed innocence has been violated both by detention and by slandering statements he has been unable to respond. He has been targeted by some persons, primarily Recep Tayyip Erdogan, and groups.

Yiğit Aksakoğlu was detained on 17.11.2018. He has been in prison for more than four months. Detention turned into a punishment method that has been employed to dodge due legal procedures, as exemplified by the case of Selahattin Demirtaş. Even if it is a lawful practice, in any case, four month detention constitutes a violation of right.

## **2) CRIMINAL LAW OF THE ENEMY**

The Constitutional Court stated in its ruling No. 2011/199E 2004/37K that “the rule of law requires that the measures to be taken be proportionate and fair in accordance with the relevant purpose”.

As mentioned above, a criminal procedure has to be conform with the constitutional principles. Submitting an appeal should be adequate under the rule of law for the wrongdoings to be “corrected” or “fixed”. However, the current systematic and unlawful criminal procedures which totally disregard the constitutional principles clearly indicate that the rule of law is defunct. The criminal law of the enemy therefore seems more appropriate to describe our judicial system. The indictment issued regarding the Gezi revolt is one of the cases on which the criminal law of the enemy has left its mark.

The criminal law of the enemy manifests itself in two forms. The first is the systematic and severe violation of the rights stemming from the principle of the presumption of innocence. The second is that the purpose of the trial appears to be intimidation/revenge/retaliation. Accordingly, defendants are treated as captives. Detentions and indictments are therefore nothing but “unlawful deprivation of personal freedom” and “slander”, respectively.

## **3) ALLEGATIONS OF COLLABORATION WITH FETO**

The indictment has charged the defendants, especially Osman Kavala and Can Atalay, with allegedly collaborating with the FETO on the grounds that they have been in contact with the Newspaper Zaman and their some speeches/statements were published by the Newspaper. The indictment stated that Kadir Kokten, a columnist of the Newspaper Zaman, said “we support the Gezi revolt” during a phone call. That is given place as an evidence of collaboration in the indictment. If someone declares his/her support for or solidarity with a protest or a movement etc., does it imply that the former direct ties with the latter? For example, if Kadir Kökten says “I believe that the defendants are guilty and should be punished”, does it imply that he and the prosecutor are affiliated with the same organization?

That absurdity manifests itself also in treating remaining silent as a crime. It is a violation of the constitution-protected right to freedom of expression. Let’s ask one more question: if a statement which is by nature not unlawful is made by a convict or defendant, does it

constitute a crime? It does in Turkey, where the rule of law is defunct. As stated in the rulings by the European Court of Human Rights (ECHR), whether a statement violates the boundaries of freedom of expression depends on the content of the statement itself, not on who makes it. Does a protest become illegal when “criminals” attend it? No. According to the ECHR rulings, it depends on the characteristics of the protest. The “evidence” on which the relevant indictment is based is therefore ill-founded and meaningless.

It is stated at the end of the indictment that the Chief Public Prosecutor’s Office has “re-evaluated” the evidence, especially eavesdropping tapes, which have been collected during the investigation launched in 2016. That “re-evaluation” is actually a tacit acknowledgement that the indictment is based on the so-called evidence, which have been acquired illegally by the public officers who were later identified as members of the FETO.

#### **4) COMMITTING THE CRIME OF INFLUENCING THE TRIAL**

The European Court of Human Rights states that the right to fair trial is one of the foundations of a democratic society. It requires that the courts and judges be independent and unbiased.

The right to fair trial is one of the rights most violated by Turkey. That crime is defined in the Article 288 of TCK, which states that the unlawful written or verbal statements made during either prosecution or investigation shall constitute that crime.

So whether the written and verbal statements made against those who have attended the Gezi Revolt constitute the crime depends on when the prosecution is initiated. When it is considered that the prosecution is launched in 2018, the relevant statements in last one year must constitute the crime. That crime has been committed by those, primarily Erdogan and other government members, who are involved as plaintiff in the case.

Recep Tayyip Erdogan directly targeted the defendants both in the national and international media, stigmatizing them as pro-terrorism, state enemies, provocateurs, members and cadres of illegal organizations. He led a slander campaign against those who attended the Gezi protests. Those statements and campaigns constitute the crime of influencing a fair trial.

#### **5) COLLECTION OF EVIDENCE/MISCONDUCT**

According to the Law of Criminal Procedures, prosecutors are responsible for “investigating material facts”. Prosecutors have to collect all evidence for and against the defendant/suspect. The prosecutor issuing the Gezi indictment has committed misconduct by only collecting the evidence against the defendants and even incorporating pseudo-evidence and deceptive and manipulative information into the indictment. The indictment fails to substantiate the relation between the evidence and actions. It is rather based on ill-founded comments and imagination. There is no evidence for the defendants in the 657 page indictment, of which preparation has taken 6 years.