

**PEN
NORWAY**

Monitoring Gezi

Interviews with each imprisoned defendant, articles, indictment reports and an overview of PEN Norway's monitoring of the five-year Gezi Park trial that was aimed at criminalising and jailing defenders of freedom and democracy in Turkey.

2023

This booklet is produced by PEN Norway. PEN Norway is an independent and non-profit membership organisation based in Oslo and dedicated to defending freedom of expression and supporting writers at risk and writers in prison. PEN Norway's goal is that everyone should have the right to express themselves freely.

PEN Norway have closely monitored the Gezi Park hearing, as well as a range of other hearings involving journalists and members of civil society as part of their freedom of expression-related human rights work on Turkey. Further to this, PEN Norway has worked with lawyers and judge's worldwide to study indictments in freedom of expression cases, including both the Gezi Park trial and the case against Kavala and Barkey. This work was carried out by Turkey Adviser Caroline Stockford and PEN Norway Turkey Indictment Project Reports Supervisor Şerife Ceren Uysal.

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“ This booklet on PEN Norway’s observations of and advocacy for the defendants in the Gezi case includes articles on the monitoring process, the importance of the Gezi uprising to the people of Turkey, the government’s brutal pushback on rights and freedoms in the wake of the 2013 protests and also our hearing reports, statements and open letters. ”

PEN Norway has a long history of trial monitoring in Turkey, but of the hundreds of hearings we have monitored, over 40 years, none has been more convoluted and basely unjust as the Gezi Park trial.

From the outset of the Gezi Trial PEN Norway was present in Silivri and Çağlayan courthouses for each hearing it was possible to attend before the restrictions on travel and public gatherings came into force following the global outbreak of corona virus.

Once travel to Turkey became impossible, we ensured that PEN Norway was represented in the courtroom by a dedicated journalist and court reporter.

PEN Norway was outraged from the very outset of these proceedings by the arbitrary and illegal detention of human rights defender, business person and civil society actor Osman Kavala and the judicial harrassment of his fifteen co-defendants.

We followed the hearings of the Gezi Park trial in person, published bilingual hearing reports and statements. We joined scores of other NGOs, PEN centres and freedom of expression organisations in statements and open letters to the Ministry of Justice drawing attention to the European Court of Human Rights’ decisions, beginning with the judgement of December 10, 2019 to free Osman Kavala from pre-trial detention.

During court observations in Istanbul, Turkey Adviser Caroline Stockford began to question whether the judge should have accepted the case’s indictment in the first place – a document of 657 pages in length, void of any concrete evidence, that took 16 months to be compiled. This led to the establishment of the Turkey Indictment Project in which we, along with notable lawyers and judges from around the world, studied a total of 22 indictments in journalist and civil society cases focussing on freedom of expression issues in Turkey. The indictment reports were supervised by lawyer Ceren Uysal.

In the course of our studies we found that not one of these indictments conformed to either domestic or international standards; they being Article 170 of Turkey’s Procedural Code, Article 6 of the European Convention on Human Rights (the right to a fair trial), other related articles and the UN’s Guidelines for Prosecutors.

As part of the Turkey Indictment Project, PEN Norway published two indictment reports relating to the Gezi Park trial defendants. These were an analysis of the indictment in the main Gezi Park case and an analysis of the subsequent indictment regarding bogus espionage charges in relation to Osman Kavala and Jak Barkey.

Both reports are included here. This booklet on PEN Norway's observations of and advocacy for the defendants in the Gezi case includes articles on the monitoring process, the importance of the Gezi uprising to the people of Turkey, the government's brutal pushback on rights and freedoms in the wake of the 2013 protests and also our hearing reports, statements and open letters.

Following the shocking sentencing and immediate arrest on April 25, 2022 of all present Gezi defendants, we continued our solidarity and support of these innocent human rights advocates by interviewing them all, in turn, in prison. Their interviews can be found towards the end of the booklet and are a testament to personal strength, convictions and their unshakeable belief in democracy and a fair, open society where all views are respected and in which the organs of state function correctly.

Sadly, it is neither possible to say that there is an independent judiciary in Turkey, nor that court protocol is duly observed, nor that the rights of liberty, security and the right to a fair trial are being observed on the basis of our monitoring of this, and other related cases.

We have compiled all of PEN Norway's work over the past 5 years into this report to allow readers to fully comprehend the scale of this baseless judicial harassment of professional individuals in Turkey, who merely legally protested the building of an illegal road through a park in Istanbul.

In light of the absence of evidence and the violation of the rights of the presumption of innocence and the right to a fair trial in this case, we can only regard the continuing detention of Osman Kavala, Mücella Yapıcı, Çiğdem Mater, Mine Özerden, Can Atalay, Tayfun Kahraman, Hakan Altınay and Osman Kavala as a hostage situation and we can only concur with the Committee of Ministers in their decision of February 2, 2022 that this trial was entirely politically motivated.

While the ECtHR's ruling on this case is clear, the defendants in the Gezi case should not be further persecuted on the basis of baseless accusations. In this context, we call on the higher courts reviewing the case in Turkey to protect and take into account the fundamental rights and freedoms set out in the ECHR and other fundamental human rights instruments to which Turkey is bound.

We continue to stand in solidarity with our colleagues.

Kjersti Løken Stavrum, President, PEN Norway

Monitoring Gezi: The cruel theatre of a five-year show trial

CAROLINE STOCKFORD

PEN Norway Turkey
Adviser

Opinion Piece

The law itself, domestic and international, is everyone's last hope when arrested in Turkey. The importance of a completely fair and independent trial is imperative in these days of seemingly constant attack, arrest and jailing of innocent citizens by the highly sensitised state. Fresh mass arrests in recent days and months of Kurdish journalists, leading human rights defenders and physicians, the introduction of vague but deliberately and directly criminalising disinformation laws; all this reflects a true dystopian, authoritarian nightmare where every right is seen as potential fuel for dissent, rather than the rights of expression, assembly, demonstration and that of a fair trial being respected and strengthened for everyone.

The Gezi case, I would say, was not a trial. It was a five-year long piece of theatre that was a shambolic and shameful way to treat innocent supporters of democracy and their defence lawyers and trial observers. We were made to go through the same ordeal, which of course was incomparably worse for Osman Kavala who remains detained, of waiting in line with hundreds of supporters outside the purpose-built court at Silivri F-type high security prison in Istanbul to attend the latest episode of cruel theatre; of a merciless puppet-master at work.

There were hundreds of defence lawyers in the huge room, purpose built to hold 810 persons. At each hearing, spread out as they were over one to three months, three hundred members of the public attended each time and hundreds of military police were present keeping us away from the defendants. The hearings were regularly attended by scores of politicians, diplomats and international observers and the Turkish and foreign press were always in attendance. The court room is so big that giant screens are installed reflect the defendants' images for all to see.

The trial was bizarre, but we all kept returning because we believed in our colleagues' innocence and we believed in the rule of law. But how can you convict 8 people based on an empty near-700 page indictment when there is no crime? How can you keep a human rights defender and business person in a high security prison with no good reason for 5 years, just because he represents a progressive form of democracy that you think you are not ready for? How can you convict defendants on less evidence that was in the file when they were (two times) acquitted of these charges? How can you, send a completely

innocent 72 year old architect, two film makers, a top lawyer and two civil society engaged human rights defenders to prison for 18 years in a trial that has broken such a gamut of procedural, national and international laws in relation to court procedure and the right to a fair trial?

This was a case about trees in a park and their attempted removal to build an illegal road into Taksim square through the Gezi (Strolling) Park where yet another Presidential vanity project was to be undertaken: the building of a commemorative barracks-style shopping centre.

Several of the defendants on trial in the Gezi case had legally opposed this road. They had already been tried for alleged crimes in relation to their activities and had been acquitted. So, where did this new case come from and who was the real target?

There is no doubt that the mass protests that spread right across Turkey caused serious concerns for the authoritarian government. Many people were protesting not only the incursion into the Gezi park, the setting of the student tents on fire and the ensuing incommensurate violence against protestors, they were protesting the long arm of the President and his attempts to interfere in every aspect of peoples' lives.

In short, the Gezi protests shook the government to their core and the pushback the state then initiated against citizens has grown in size to this day. Their fear-based authoritarian violence has prevented not only freedom of thought and expression but the freedom of assembly and demonstration. According to Turkey's Medical Association, the actions of riot police whilst firing tear gas cannisters during the Gezi protests resulted in 7,478 people being injured, 91 with severe head trauma and in 10 people losing an eye.

During the protests in the central Anatolian city of Eskişehir a policeman kicked a 19 year old student, Ali Ismail Korkmaz, to death. Korkmaz suffered fatal head injuries. He was turned away from hospital on the night of the attack and upon his return there in the morning he suffered a brain haemorrhage and died. This in itself is shocking enough.

What is utterly incomprehensible and is sadly a trademark of this ugly and protracted case is that the policeman who murdered Ali Ismail Korkmaz was among the plaintiffs in the case. I saw him take the stand and ask to be compensated for damage to his police career and for compensation to the damage to his feet for kicking that boy to death. "Since being investigated for murder, I haven't been able to gain promotion in the police force, and to this day I still have pains in my feet," he said.

How can a judge permit such testimony? How can a prosecutor include it in the indictment? Korkmaz's parents had travelled 10 hours on the bus to be there in Istanbul. "You murdered my son!" his mother shouted. The lead judge threatened to have her removed from the court.

The indictment

From the outset it was clear that the indictment in the case was problematic. Not only had it taken 16 months to be written by the Prosecutor, but it was 657 pages in length. It is not beyond reason to suggest that both the length of time taken in its preparation and the length of the document itself were delaying tactics to keep Osman Kavala and Yiğit Aksakloğlu in prison.

The Gezi Park indictment sparked the idea for PEN Norway's Turkey Indictment Project. This project began in 2019 and resulted in two final reports in 2020 and 2021 in which a total of 22 indictments in cases of journalists and members of civil society were studied by judges and lawyers from Turkey and from all over Europe. In each case it was found that neither domestic or international law or guidelines had been implemented. In 2021, in line with our recommendations that no evidence that is not pertinent to the case in hand be included, the Ministry of Justice amended the guidance on indictment writing under Article 170 of the Procedural Code to that effect.

Mr Kevin Dent QC, of the Bar Human Rights Committee of England and Wales reported for PEN Norway on both the Gezi Park indictment and the subsequent indictment against Kavala espousing false espionage charges. These indictment reports lay out far more precisely than I can here the illegal and politically motivated nature of the indictments and should be read in full in order to understand this case, that has been a nadir in the history of the judicial system in Turkey.

“ There is a concrete risk that Turkey will be expelled from the Council of Europe just so that Osman Kavala can be kept in prison. This would prevent 85 million citizens being able to appeal judgements from domestic courts regarding violations of their basic human rights.

”

The Plaintiffs

The case included so many plaintiffs and went for so long that, at later hearings, it was declared that some of the plaintiffs had died during the case. Not only was the President and his entire cabinet at the time of the Gezi protests seeking to claim against the defendants, but each and every shopkeeper and house or business owner who had filed a complaint for criminal damage was listed, along with their estimates for the theft of bricks or for windows broken.

The Prosecutor sought to hold the 16 defendants personally financially responsible for the uprooting of a paving stone here, a broken window there, across the entire country in a protest that was estimated to include over 3 million of Turkey's citizens.

Who were the witnesses?

The chief witness in the case was a man who had renamed himself Murat Papuç. He was a former member of the Turkish Communist Party who then served in the military. Several months into the trial he asked to be recused and for his testimony to be withdrawn. He cited mental health problems and claimed that his time in the army had caused him to suffer from PTSD and psychosis. He declared that his own evidence was unreliable. The judges refused his request to leave the case despite his protests. They further heard and admitted his testimony in secret and under the false name of Papuç when his legal name was Eren.

The judicial panel proceeded to hold two closed hearings at which to hear his testimony. They did not permit the defence lawyers to be party to these hearings. This was yet another serious breach of protocol in this case.

The court heard from only two witnesses in public, namely a security guard and police officer, during the five-year trial. At two of the hearings prime witness Papuç gave evidence in private with only the judges and prosecutor present. This a breach of court protocol as the defence lawyers were never given any opportunity to cross-examine the witnesses.

The second witness was a police officer who came to court, took the stand, and answered the judges' questions. He claimed never to have met any of the defendants before, or seen them engaged in the protest. "I know some of them because they are famous," he said. "But no, I didn't see any of them leading a meeting or protesting at the Gezi Park."

The Prosecutor

The Prosecutor in Turkey is not charged with cross-examining the defendants or witnesses in order to prove the offence for the panel to convict. Instead, it is the three judges together who confer and convict, acquit, or dismiss the case.

It is worth noting that the prosecutors in these cases, too, are appointed by the Council of Judges and Prosecutors, a panel chosen entirely by the President and Executive. So, can we believe for a second that they are free from any pressure to convict in a



Heidi Heggdal (Norwegian judge), Agnete G. Haaland (PEN Norway Vice President), Caroline Stockford (PEN Norway Turkey Advisor), Gezi Trial Monitoring, inside Çağlayan Courthouse

manner that would please the President and Executive? These are serious questions and can only be resolved by a thorough and meaningful reform of the judicial system in Turkey.

The Prosecutor who wrote the Gezi Park indictment is himself now formally charged with terror-related crimes. The judges who signed the permissions for the wire taps of the Gezi Park defendants, too, were all under investigation for allowing illegal wire taps. I could go on, but to state each and every absurd anomaly of this case would be to confuse the issue and detract from the basic innocence of defendants, a tactic no doubt employed over 5 years by the state beginning with the overly long indictment.

How can we believe in the independence of judges and prosecutors from the will of the executive when each lead judge is promoted, even to positions in the Constitutional Court, following absurd convictions of innocent defendants, and yet judges ruling for the freeing of Osman Kavala from pre-trial detention are demoted and swiftly removed from their positions in the case.

The rulings of the European Court of Human Rights on Kavala's detention

When the decision from the European Court regarding the imprisonment of Kavala came on 10 December, 2019, we international observers, journalists, lawyers and human rights defenders monitoring the case were sure that the court would heed the decision and would release Kavala at the next hearing on 25 December 2019. Turkey has been a member of the Council of Europe since 1954 and a decision from the European Court supercedes that of any court in the land. The judicial panel claimed that the decision from the ECtHR had not yet been translated by the Ministry of Justice and they could not therefore implement it.

The court proceeded to ignore not only this decision from European Court but each subsequent one, until the European Court's Grand Chamber handed down a judgement against Turkey for failing to carry out the court's orders and releasing Osman Kavala. What does this mean? It is a fine balancing act for the Council of Europe. They do not wish for the authority of the court to be undermined by Turkey's ignorance of their binding decisions and yet neither do they wish to see

Turkey expelled from the Council as this too might cast aspersions on their authority. However, each defiant, illegal step by Turkey weakens the reputation of the court for all.

There is a concrete risk that Turkey will be expelled from the Council of Europe just so that Osman Kavala can be kept in prison. This would prevent 85 million citizens being able to appeal judgements from domestic courts regarding violations of their basic human rights. So, why Kavala? Does he represent the solution, with his human rights work, his support of the arts, his political perspectives, is he the antidote to authoritarianism?

No crime, but punishment

One must remember here that another key characteristic of AK Party-era trials is summary punishment. Defendants, be they journalists or human rights defenders, are arrested and put in prison under pre-trial detention. The prosecutor then appears to attempt to build a case with which to prosecute them, often by trawling through their social media feeds of the last 8 or 10 years. Pulling up two retweets void of political statements, void of praise for terror groups and void of incitement to hatred and violence is usually enough to keep them in jail, to drag out a trial over 2 years and then to either jail them for a longer term or release them, often subject to a travel ban or police controls.

The facts of the Gezi trial are very simple. There was, and is, no evidence. The defendants represented the spirit of the instantaneous Gezi Park protests, the call for equality, democracy and a lessening of the interference of the state in the lives of everyday citizens. The levels of violence in terms of the use of pepper spray, water cannons and rubber bullets demonstrated by the state against its citizens served to frighten most citizens away from joining a march ever again. Police now regularly ban marches by women and the LGBTQI+ community and yet allow mass gatherings of conservative groups, such as the recent 'Family Values' picnic and further demonstrations recently against the LGBTQI+ population of Turkey.

Experience of the trial monitor

Over the past eight years I have monitored more than 120 court cases in Turkey, from small towns such as Iğdır to the purpose-built courtroom in Silivri prison where 23,000 men are imprisoned nearby, but none of the cases I have observed have come close to the Gezi Park trial in terms of injustice, drama, illegality and wilful disregard for domestic and international law on the part of the judicial panel and Ministry of Justice. To claim that an European Court decision cannot be implemented because, in the words of the judge, "It's still out for translation with the Ministry of Justice" is a smokescreen masking a particular and politically motivated disregard of the judicial system.

The Gezi Park defendants are not guilty. This actually is a hostage situation and yet another example of the ruling coalition's refusal to accept the rule of law as laid out in the conventions to which it is signatory. Democracy without democracy, law without the law, freedom of speech without freedom of expression, assembly without demonstration, the ruling coalition refuses to comply with Turkey's constitution and the European Convention, whilst refusing to declare an all-out dictatorship.

Are we still waiting for Foreign Ministers of European countries, especially those such as Britain who have a strong relationship with Turkey, to stop being afraid of holding Turkey up to the very democratic norms and conventions that they invited it to adhere to in 1954 with its signing of the European Convention? The European Court, for all its seeming sluggishness when stoppered by the top four offending countries, Turkey included, providing 85% of its cases, is vital to citizens and lawyers in Turkey. At my attendance of over 120 hearings in the past eight years I have heard it quoted, and its tenets completely ignored, time and time again.

Turkey's judges, despite the youth and lack of training of some, following the mass jailings post-2016, understand the Convention perfectly well. It is a lack of political will, with insufficient stringent guidance on international law being passed down from the Ministry of Justice that perpetuates shameful show trials such as Gezi. It is a lack of basic judicial independence in the selection of prosecutors and judges and it is the bullying stance of a leader who demands that his will is reflected in the courtroom.

I am proud to have observed for PEN Norway every hearing in this illegal trial that it was possible to attend from abroad. I do feel, however, that this level of constant injustice to the defendants, especially the ever-calm Osman Kavala, has in turn traumatised me and I still hold a great deal of anger at this disgraceful, direct manipulation of the judicial system by the state.

The Gezi Park defendants Mücella Yapıcı, Çiğdem Mater, Mine Özerden, Can Atalay, Hakan Altınay, Tayfun Kahraman and Osman Kavala must all be freed, forthwith, from prison in Silivri and Bakırköy. They are innocent professionals, hostages of democracy and we must not stop campaigning, with all their supporters in Turkey and internationally, until their case reaches the conclusion so clearly suggested by its many parts: that of full acquittal of every defendant involved and compensation for this inexcusable, unfathomable judicial ordeal.

Here follow links to each of our hearing reports and statements since 2017, upon which the above has been written.

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Ş. CEREN UYSAL
PEN Norway Legal
Adviser on Turkey
Opinion Piece

The Gezi Park Protests: **A breath of fresh air, our pride, a dream, a hope**

I have been living abroad, away from Turkey for a very long time. During this extended period in my work and social life I've had the opportunity to come together with many people of different ages, occupations and dispositions, and from different countries. I've always had the same feeling: When Turkey is seen through a European gaze, a pessimism can loom large during discussions in a way that can sometimes be detrimental for one's determination to carry on with the struggle. Right at the outset of this article, let me declare that I have never shared this feeling of pessimism, even today, and despite all what happened. Pessimism is for the privileged. As the peoples of Turkey, however, we have never had such a privilege.

Regardless of the country in question, people ask specific questions when they meet with someone who cannot go back to her own country because she is an asylum seeker, or who is willinfully avoiding going back. Such inquiries are often well meaning. Nevertheless, they inevitably imply a scrutiny. People may feel that a person who does not / cannot travel to his or her country or who chooses not to live there must feel hopeless. I did my best to withstand that attitude.

I feel compelled to make such an introduction to an article about the Gezi park protests, because I am writing as an outsider, not mentally but physically. As I write my sentences, I am empowered by my insight that my prevailing emotion is now shared by millions of people in Turkey, an insight that is supported by various social indicators. I would be happy to see that this empowerment is taken as the basis of our determination to carry on the struggle.

Although I'm aware that the Gezi Park protests Here I will try to explain the significance lattach to Gezi. Meanwhile, I am aware that Gezi holds many meanings for other people.

A breath of fresh air

Many who study Turkey make the unfortunate and grave mistake of taking the declaration of the state of emergency as the starting point of the predicament of the country at present.. However, Gezi has been one of the indicators that suggest that Turkey has never been a garden of roses. The question is more: has Turkey been as troubled as it is today? That's another question of course, but for some of us, the answer is yes. For the Kurds, for the working class whose cheap labour

is exploited to such an extent that arouses the envy of the multinationals, for women trying to survive in a country where women are murdered every day, and for LGBTI+ people who are almost daily denounced as being the “sacrificial” Homo Sacer. For them Turkey has never been a country where people can laugh aloud, walk without a care, feel safe, and whose institutions, including the judiciary, can be trusted. The declaration of a state of emergency and its aftermath had a certain weight, that is for sure. Recent events took this ever-present anxiety and unrest, which before the state of emergency had mainly haunted the aforementioned groups, and spread it to much wider sections of society. By using all the colours that had the chance to express themselves in Gezi, I would like to carefully highlight that we could not breathe, in fact we were suffocating in Turkey before June 2013.

From a sociological point of view, the fact that large parts of a society cannot breathe means that a large part of that society has no remaining links that tie them to the administrative system under which they are forced to live their lives, that they do not have any positive expectations from that system. This was exactly what we have been going through before 2013.

Yes, we couldn’t breathe. The forests of the country were being plundered. The landmarks that had a prominent place in our collective memory were being demolished. In İstiklal Street and Taksim Square, we were banned from raising a critical voice. On the eve of the Gezi Protests, hundreds of thousands of people wanted to celebrate May Day in Taksim Square on May 1, 2013 and were subjected to heavy police intervention. At that time, I was on duty at the crisis desk of the Progressive Lawyers Association. I was doing voluntary work such as drafting reports about the rights violations reported on our hotline and providing access to lawyers where necessary. On duty at the crisis desk, two other lawyer colleagues and I were aware that entrance to Taksim Square would be closed off by the early hours of the morning, so we met at the association building before seven o’clock in the morning. That day, many young people -I cannot exactly remember the exact number- were badly injured by tear gas canisters. Some people underwent brain surgery. Some lost an eye to gas canisters.

We received a phone call that day from the friends of a young woman named Dilan. We could hear Dilan and her friends’ screams in the background. Dilan was 17 years old. They were cornered inside a house. As we were trying to calm her friends on the phone, Dilan was shot in the head with a tear gas canister. She was seriously injured. We are in 2022, and Dilan’s file still obstructs further investigation, and it is not completely off the table that those culpable for Dilan’s injury will be granted impunity once the statute of limitations of the case expires. Dilan herself is still undergoing one medical operation after another.

All this happened one month before Gezi. This was the reality and our mood as we were heading towards Gezi. At the time we witnessed the demolition of the Emek Movie Theatre, Dilan’s injury and the detention and torture of lawyers after a dawn raid 6 months before Gezi. After all, the Gezi resistance was born in an atmosphere where the violence of the state almost resulted in the uprooting of harmless trees of Gezi Park, which could not exactly be classified as “dissidents”.

We were people who felt overwhelmed by, fed up with and angry at the injustice, unfairness, and unhappiness we faced every day. And yes, we stood up to protect nothing more than a bunch of trees. We knew deep down that protecting those trees meant protecting our pride, our future, our mental health, and one another. As such, Gezi was a practice of expressing our love towards nature and one another. For us, Gezi meant being able to breathe again.

Our pride

Then came the events at the Gezi Park.

The Gezi resistance is always dated to May 31st. But actually, starting from May 27th, a vigil had begun in the park to protect the trees. Almost every night, those waiting in the park were ousted from their places at dawn and the next day there were crowded meetings in the park during the day and in the evening. The degree of police intervention against those who wanted to protect the park was increasing day by day.

One night, in the small hours, the phones of lawyers and rights defenders entrenched around Taksim Gezi Park began to ring one after the other. I still remember it. It wasn’t even seven in the morning. We all knew that the Park was besieged and that there was an active resistance there. We were there the night before, as were thousands of others. Some had made enthusiastic speeches from the stage; we

had sung songs together and applauded. Then a group of people remained there on lookout. That early morning telephone call notified us that state forces had tried to burn protestors' tents and that people had been beaten up.

On the same day, at ten in the morning, a call was made for a press conference in front of the Taşkışla Building of İstanbul Technical University. The press conference was bathed in tear gas.

On the same day at noon there was another call for a second press conference in Taksim Square, which was also dispersed with large amounts of tear gas. Pepper spray canisters were buzzing over our heads. A family of tourists with 3 children one in a pram, tried to take shelter on a corner just where the elevators go down to the subway. The children were screaming. We all ran left and right, lifted those who fell on the ground... Lobna Allamii, however, failed to stand up from where she fell. She was hit in the head by a gas canister, and later had to relearn how to speak, write and walk. Any one of us could have been in her place. She was there because she couldn't breathe either; she was there so that we could breathe again, for a mere bunch of trees, and because she cared for the fate of people she had never before met.

There was another call in the evening. People were eager to enter Taksim Square from Harbiye, Tarlabası and Gümüşsuyu neighbourhoods. We had arrived at İstiklal Street in the morning as thousands of people. We wanted to go to Taksim Square. We were demanding our right to demonstrate, our right to speak, our right to social participation. Meanwhile, we were refusing to be brought into line by tear gas canisters, because this was what we had been protesting against.

To explain it in a legal context: The rights violations we were exposed to before Gezi Protests left us breathless. Because it was impossible for us to breathe in an atmosphere where everything was put on hold from our right to assembly and demonstration to our freedom of expression. However, the disproportionate police violence that we were exposed to collectively after the Gezi protests began had now taken the shape of an attack on our dignity. We were no longer struggling to be able to breathe again or for a bunch of trees. So, it was not just about defending the trees. We were facing a choice between servitude and dignity. Counted in millions, we the people had made a choice in favour of our pride.

Art, Poetry and Laughter: Another Life – Another World

Finally, we were in Gezi Park. Taksim Square and even İstiklal Street were ours. We were together as millions of minds that had not previously been and thought together.

And came the dream, labour, poetry, people and laughter...

In Gezi Park, there were libraries set up thanks to a collective effort. There were collective kitchens where nobody asked for any money, but this did not encourage people to abuse the generosity. There was a kindergarten. There was an ecological farming area. Homophobes were introduced to the fact that LGBTIQ+ people actually "exist". Football fans were put to shame because of the sexist language of their slogans (and this was thanks to the hard efforts of the feminists, of course). While the Situationist spirit of the '68s painted the walls of İstiklal Street with poetry, there were thousands of people in Taksim Square and Gezi park, asking the same question - "What are we going to do now?"

For the first time on the streets of Beşiktaş there were demonstrations in support of the Kurdish town of Lice. This was perhaps one of the first breaches in the invisible walls that used to divide Turkey. Tens of thousands of people who have taken the news of the mainstream media to be true, took to the streets for the first time, demanding a truly independent media. Doctors set up infirmaries. An Imam opened the doors of a mosque to those who were looking for a shelter from the police violence - though life was made unbearable for him afterwards. A university jazz choir sang in the park. A pianist gave a recital to hundreds of thousands of people in the square. Mothers formed a circle against police violence and acted as human shields. Lawyers shuttled between courthouses and police stations 24/7, without asking for a single penny. Retired teachers took charge in the kindergarten.

I remember a boy. He was 18 years old and was studying culinary arts in a small town. He was detained and then an arrest warrant was issued for him. He was an 18-year-old who has never attended a single rally or press announcement in his life. He was being so genuine as he tried to explain to the judge why he was in Gezi. He said that he had been doing a handprint painting activity together with the children

in the kindergarten, because the children had to be happy and productive under those circumstances. On the other hand, he was building a wall “to be demolished” because “that would be a symbol of the destruction of all prejudices on the last day of Gezi.”

I have no idea where this young man is today, what he does and what his attitude to life is. But that day, I was proud to be his lawyer. Because Gezi was exactly what he was trying to explain in the court. It was a longing for a world where future generations and children can live happily, to feel carefree, free, and to live colourfully... And it was the collective demolition of a wall, which represented the darkness that had descended on all of society.

That’s why Gezi was a dream, a labour, a poem and a people. ...

It was another life and another world that we knew could be real.

And the one that we must tightly embrace today: Hope

In my opinion, it is a responsibility to acknowledge, underline and to recount that Gezi stands for hope. Today, a handful of people have been sentenced to punishments of up to 18 years because of their alleged involvement in the Gezi protests. And even this itself stands as a belittlement of the unique collective mind of Gezi. The Gezi Protests were a far greater dream than could have been created individually. Like the rest of us, they were just a part of Gezi. To show our solidarity with them and to defend Gezi, perhaps we may need to say it louder. We were all there! And today, we are still proud to have been there.

As I said at the beginning... Whether we are in Turkey or abroad, those of us who struggle to make another world possible in Turkey have always been and still are facing the same questions -and we are expected to give pessimistic and wistful answers to them. To these questions, the answer I give has never changed: There is hope for Turkey. And then I tried to explain it with the best words I could find: Turkey is one of the rare countries where the struggle continues uninterrupted... Millions of people joined the Gezi protests, just a few years ago. These people have not vanished into thin air, they are still there, breathing, living... And as long as these people exist, there is hope for Turkey.

That’s why, when I sat down to write about the Gezi protests, I thought that I should first talk about the hope that Gezi raised. That’s why I would like Gezi to be remembered as such:

Gezi is hope. And we have dozens of reasons to feel this hope deep in our hearts.

Today, Gezi lives on in the night marches held on March 8th every single year... Gezi emerges in Turkey’s pride parades despite all the bans they face... As the entire society is cornered into a dystopia, Gezi is now being experienced and kept alive by the journalists, lawyers, students, and workers who refuse to remain silent in an atmosphere where all kinds of voices and words are banned!

In my opinion this hope and the resistance fuelled by this hope are the heralds of another future. Not only for Turkey, but for all regions that share the same feeling of breathlessness.

“ Today, Gezi lives on in the night marches held on March 8th every single year... Gezi emerges in Turkey’s pride parades despite all the bans they face... As the entire society is cornered into a dystopia, Gezi is now being experienced and kept alive by the journalists, lawyers, students, and workers who refuse to remain silent in an atmosphere where all kinds of voices and words are banned.

”

A short history of the Gezi case

GÖKÇER TAHİNCİOĞLU

Construction vehicle operators broke into Gezi Park, situated in Istanbul's main square of Taksim on March 27th, 2013 in order to carry out instructions to uproot trees. Little did they know they would kick-start an episode that would go down in history.

Various individuals became the pioneers of a great resistance as they acted as human shields to protect the trees, began to keep watch in Gezi Park, and stood their ground despite the extraordinarily harsh interventions of the police.

Working without construction permits and despite the Protection of Natural Assets Board's decision that outlawed any attempt against Gezi Park, the construction vehicles attempted to break into the park and were repelled. Hundreds of thousands of people took to the streets when the state resorted to violence against the group of people remaining inside and protecting the park.

The Gezi protests were a reaction against anti-abortionists, gender discrimination, interventions against freedom of expression, murders, massacres, and security operations particularly such as the Ergenekon and Balyoz [Sledgehammer] cases. Protests started in Istanbul but quickly spread all over Turkey. Ten people, eight of whom were demonstrators, lost their lives, and thousands were injured.

Numerous lawsuits have been filed over the incidents. The case known as the Taksim Solidarity Case saw the acquittal of 26 individuals at the time. The lawsuit filed against the football supporter group "Beşiktaş Çarşı" resulted in acquittal. At the time, the courts were mainly interested in whether the demonstrations were unauthorised or not. We realised only later, however, that the courts were already after something else even back then. From the very first day, steps were taken to go beyond this scope of mere legality and to fabricate "culprits".

Judicial Panel Discharged, Aggravated Life Sentences and 18 Years of Imprisonment

On April 25, 2022, the 13th Assize Court of Istanbul announced its decision in the Gezi Case. The court sentenced Osman Kavala, The Chairman of the Executive Board of Anadolu Kültür, to aggravated life imprisonment and Ayşe Mücella Yapıcı, Çiğdem Mater Utku, Ali Hakan Altınay, Mine Özerden, Can Atalay, Tayfun Kahraman and Yiğit Ali Ekmekçi to 18 years in prison. Together with the judgments

the Court has issued arrest warrants for all the defendants except for Kavala who has been under pre-trial detention.

This was despite the fact that 30th Assize Court of Istanbul had, 26 months ago, acquitted the very same defendants who were on a trial with the same evidence and accusations.

This judicial panel, however, was soon discharged. First, a second judicial panel was commissioned within the court and then the members of the former panel were assigned to different courts. And once the Court of Appeal overturned the acquittal the file was sent to the 13th High Criminal Court of Istanbul instead of the 30th. This was done by means of employing an unbelievable method. A judge, who previously drafted the motion to combine the case in question with another case involving Beşiktaş Çarşı Group in this court, ended up assessing his own motion while on duty at the 30th Assize Court of Istanbul and approving it. Thus, not only the judicial panel but also the court had been changed. The new panel included Murat Bircan, a judge who did not hide the fact that he used to serve in the administrative structures of the ruling AKP party until just 3 years ago. Bircan voted in favour of conviction and as such played a decisive role in the conviction verdict, which was given by two votes to one.

Otpor and Canvas Groups

The reasoned judgment of the trial was completed on 8 June 2022. The result was not unexpected. References were made to the Gezi indictment which claimed that Kavala and the Open Society Foundation designed the Gezi protests to overthrow the government, and that the groups named Otpor and Canvas, which were stated to have previously organised protests known as the Orange Revolutions in the Ukraine and Egypt, were utilised to ensure the Gezi protests were effective. The indictment emphasised the same allegation and cited as proof Kavala's travels abroad and the fact that artist Mehmet Ali Alabora, one of the fugitive Gezi defendants, had been present in the same country together with the Otpor leaders at the same time. There was no evidence that a meeting took place, and also the leaders of Otpor had announced that there was no such meeting, but the Turkish judiciary was convinced that there was.

The court had previously commented that the wiretaps dating from 2013 were "not legal" and had ruled for an acquittal. However, according to the 13th Assize Court of Istanbul, which ruled for a conviction on the same case, the wiretaps obtained through a judge's warrant issued under the offence of "getting organised with the purpose of committing crimes", could also be used in other cases involving different offences. The court saw no problems there as it believed both groups [Otpor and Canvas] to be organisational structures. A member of the panel objected to this view on the grounds that wiretaps were not legal, but her opinion remained a minority one.

There weren't any statements in the wiretaps to prove the connection between Otpor and Canvas, but this was also ignored. The reasons for this is that already, in the first days of the Gezi trial, the plan was to exploit these organisations as a pretext to punish the persons that had been identified as potential culprits. One could see that was the case from the way things unfolded back then.

“ Various individuals became the pioneers of a great resistance as they acted as human shields to protect the trees, began to keep watch in Gezi Park, and stood their ground despite the extraordinarily harsh interventions of the police. ”

Nine years ago: AKP, Fetullah Gülen's followers and Nationalist Figures Share the Same Opinion

The indictment of the Gezi trial included the allegation that the Gezi protests were planned and financed to overthrow the government, and that all operations were conducted by 'a tripartite alliance'. According to the indictment the names that made up the alliance in question were Soros, Otpor leader Marovic and Osman Kavala.

The indictment is based on the claim that Soros utilised the Open Society Institute to topple governments, that Otpor was established in Serbia and operated to overthrow governments for money through its US connections, and that Kavala has planned and financed the Gezi resistance with his Soros and Otpor connections.

What was interesting, however, is the date when this claim was first voiced. The Gezi protests began on May 27th, 2013. A few days later, the first articles about Otpor began to appear. Banu Avar, a journalist known for her nationalist credentials, was one of the first to forge a connection between Otpor and Gezi. In her article on May 31st, 2013, Avar first criticised Gezi and said *"Led by the BDPKK, the crowd was protesting the destruction of Gezi Park in Taksim, but suddenly found itself as the agent of an international operation! The incidents seem to have been prepared long ago but the crowds were unaware of that. Suddenly, the incidents became the "most viewed" on Twitter and Facebook internationally. Taksim Square was flooded with foreign correspondents and informants... Social networks rocked with posts distinctly reminiscent of the Arabic Spring in Egypt."*

The next day, Avar associated Otpor with Gezi, and she wrote, *"I worked as a journalist in countries where "Orange Coups" were staged in 2004-2005. I documented the situation in the Ukraine, Kyrgyzstan, Lebanon, Georgia and Kosovo. The AKP government brought the country to the brink of civil war and division. There is no law, no justice! Such episodes are breeding grounds for an orange operation. OTPOR and CANVAS are the COUP organisations of western intelligence agencies. The image of the clenched fist is provoking people on social media. With their open hostility towards the Turkish nation, Amnesty International and similar institutions which have so far been silent about disasters in Turkey, are passing decisions over the Gezi Park protests, while the EU and US politicians are making statements. That is not a good omen. It is our duty to warn people!"*

Just one day after Avar, Erhan Sandıkçı, 19, penned a long and detailed article that was published in a website named "Güncel Meydan", which in turn was quoted almost literally within the Gezi indictment. In the article titled "What is going on, what is to be done?", Sandıkçı said the following:

"... I sensed that something was off and that compelled me to write such an article... The "Arab Spring" which began in North Africa and spread to Syria in 2011 is the work of a global gang. Social media and the spider web of civil society organisations became prominent. I was present in the demonstrations of May 31st during the evening and night. A demonstration was held before huge crowds took to Istanbul's main İstiklal shopping street. I noticed that some protesters who argued with the police at the front wore helmets that said "#OCCUPYTURKEY". "#Occupyturkey" was one of the most popular hashtags on Twitter. "#DirenGeziParkı" was a top trending topic both in Turkey and globally."

“The indictment of the Gezi trial included the allegation that the Gezi protests were planned and financed to overthrow the government, and that all operations were conducted by 'a tripartite alliance'. According to the indictment the names that made up the alliance in question were Soros, Otpor leader Marovic and Osman Kavala.”

Sandıkçı continued, “On Facebook, “Occupy Turkey” became the page where the latest information about such demonstrations was posted most quickly. By June 1st, at around 3 a.m, that page had 16 thousand members and it reached 40 thousand members by 11 a.m in the morning of the same day. Most likely, this page will be used to try to direct the course of the demonstrations. “Occupy” means to invade in English. This slogan was first used during the protests on Wall Street in 2011. OTPOR-CANVAS were leading the Occupy Wall Street demonstrations. OTPOR emerged in the Balkans and organised the “civil” resistances that ripped Yugoslavia apart. From the very beginning, the “Occupy Turkey” page has been an effective part of the Gezi Park process. The Occupy Turkey page was created during horrific incidents as (President) Erdoğan attempted to break into METU (Middle East Technical University) with tanks, blasting the protesting students with tear gas and high-pressured water. A review of recent posts shows that the page tried to steer the “support for METU” demonstrations. Knowing that it was a Soros conspiracy that lit the fuse of these incidents, patriots should take to the squares of the city to offer a louder voice and take control of this process,” he wrote.

“A raised fist”

Sandıkçı’s article was published on dozens of websites without reference. The article included images that showed the evolution of the “raised fist” symbol in the different countries where it appeared, and also mentioned Otpor’s and Canvas’ initiatives in different countries. From the very first day, Gezi was linked to Otpor using various maps and images.

The Press Intervenes

On June 6th, a pro-government newspaper titled “Türkiye” featured a news story about Otpor taking centre stage in Turkey as the architect of the Orange Revolution and Arab Spring. The story did not cite any sources but claimed that the same group tried to steer the process during the METU protests, that it was mobilised before the Taksim demonstrations, and that the Gezi Park incidents were being directed by these groups. Another article titled “The Codes of the Deep Coup” published in Türkiye newspaper on June 8th claimed that the organisations that Soros supported had been plotting the Gezi Incidents via the media and students.

By June 10th, the former Mayor of Ankara City, Melih Gökçek, and Yiğit Bulut began to voice the same claims based on a Youtube video that had Turkish subtitles and that made claims about Otpor’s involvement in the Gezi protests. On June 13-14, the very same claims were reported in detail, this time in Takvim newspaper and on a TV channel called A Haber.

A succession of news stories were now coming in. Everything that happened in Gezi was to be associated with Otpor and Canvas.

Prosecutors of “Fetullah Gülen’s followers” Working Hard

We now see from the case file that the “investigation of the organisations” associated with the Gezi protests was initiated while the Gezi protests were still going on. The fugitives-to-be, prosecutors and police chiefs who would be prosecuted later on the grounds that they belonged to the Islamist Fethullah Gülen’s followers had prepared a legal report about Kavala at that time and based it on the Otpor and Canvas allegations. Then phone calls had been made. For some reason, however, this report and evidence were put on hold. This was probably because the alliance between the AKP and the Gülenists broke down after the prosecutors, who were members of the exiled cleric Fetullah Gülen’s followers, launched an operation in the week of December 17-25, 2013, that targeted various government ministers who had initiated the purge against all followers of Gülen.

Evidence Summoned Up

Following the attempted military coup by the Gülenists on July 15th this evidence was summoned back up. As the country was under a state of emergency, prosecutors launched an investigation against Kavala, examining the statements made at the time. On November 1st, 2017, Kavala was arrested on two separate charges as part of the investigation that would go down in the history of law. Two separate charges were brought against Kavala, who was one of the leading figures of the civil society movement in Turkey: Provoking the July 15th coup attempt and financing the Gezi incidents.

While Kavala was in prison, the prosecution filed a motion for his release on the charges in the July 15th file. After a while and together with other defendants, a Gezi lawsuit was filed against Kavala, who had been released on the aforementioned charges. Kavala was acquitted in this file to the great dismay of the government. This time an arrest warrant was issued based on the previous file on which he was released, thus blocking his release. However, there was a problem. The European Court of Human Rights had previously convicted Turkey for the Kavala case.

Therefore, the judiciary thought it would be better to modify the accusation. First, Kavala was arrested on charges of espionage, and then released on the charge of violating the constitutional order in the July 15th file. Then, a new lawsuit was filed against Kavala on the charge of espionage.

Meanwhile, the Regional Criminal Court of Appeal overturned the acquittals ruled in the Gezi trial. The case was then sent back to the İstanbul 30th High Criminal Court. Later, it was merged with the espionage case against Kavala and the Beşiktaş Çarşı case, which had previously ended in acquittal but had been overturned by the Court of Cassation at the İstanbul 13th High Criminal Court.

First, the court separated the files once again and then handed down the notorious judgment in the Gezi trial. And did so by acquitting him of the espionage charges which led to Kavala's detention.

An Indictment Similar to the Articles Published Six Years Before

At this point, it would be useful to re-assess the indictment on which the whole process was based.

At the heart of the indictment that was written six years after the Gezi protests, was the Otpor Canvas theory, which was introduced in the early days of Gezi and embraced by the government. The indictment stated as follows:

In the first days of the uprising, some individuals who argued with the police in front of the group of demonstrators wore helmets and t-shirts that had the inscription @OCCUPYTURKEY. One of the most popular hashtags on Twitter, where the demonstrations were basically organised, was #occupyturkey. The hashtag in question was created on May 28th, 2013, and a total of 500,000 Tweets were posted under the hashtag. For a great number of days, the hashtag #DirenGeziParkı had been the trending hashtag in the Twitter list for trending Turkish and global events. On Facebook, the page titled #OccupyTurkey became the page where the latest information about this uprising were posted most quickly. The page, where the course of the uprising was steered, had tens of thousands of subscribers within a day or two... The page in question was created during the student protests that started on December 18th, 2012 at METU and lasted for days... In short, back in 2012, a collective structure, formed under the supervision of OTPOR/CANVAS by the defendants, repeatedly put out feelers for a popular movement in our country."

These passages are very similar to the report drafted by the Gülenist prosecutors and they are almost identical to the articles by Avar and Sandıkçı. Although the indictment stated that the evidence was re-evaluated in 2016 and the possible influence of pro-Gülenist police and prosecutors were eliminated from the investigation, its sources and the allegations remained exactly the same. The reasoned judgment offered Otpor and Canvas as the main justifications for the conviction, as it had been the case within the report and the indictment.

What did they say afterwards?

In 2019, a website named Artı Gerçek featured interviews with Avar and Çağrıçı, the authors of the articles in 2013. Avar briefly said, *"Each country has its own distinct conditions. I do not think that the people accused in the Gezi Indictment are guilty. But I think there were certain plotters who wanted to manipulate Gezi. I surveyed this issue not only in that article but also in my book titled 'Kaçın Demokrasi Geliyor' [Watch Out, Democracy is Coming]."*

Sandıkçı said, *"As I was writing that article 6 years ago, I was also attending the protests. In other words, I did not have a blanket view of Gezi as "a conspiracy of foreign powers" which we should avoid being part of, on the contrary I was actively participating in it... Partly due to my mindset as a 19-year old person, I wrote that article with inflated skepticism... And the Gezi indictment "quoted" my article generously. The*

indictment referred to many “online” resources, YouTube links, etc. with the exception of the website where my article was published. (If it weren’t an indictment but a scientific article, this would have been called plagiarism.) There is, however, no reference because they have conveniently quoted the article, which would not please them if they quoted it in its entirety. There is no tangible evidence in the indictment anyway.”

Public Squares are Now Prohibited to the Public

The constitution of Turkey recognises everyone’s right to make press statements, to assemble and demonstrate without requiring any permission. However, after Gezi, the public squares were gradually prohibited. During the state of emergency that followed the July 15th coup-attempt, postponements and bans were issued even for workers’ strikes. Under the initiative of the governorships, they began to declare almost all protests illegal once the state of emergency ended and the so-called Presidential Government System was introduced. In some cities, bans on public protests have been in place for years. In cities such as Istanbul and Ankara, images of the police interventions against protests make it into the news almost daily.

The government’s attitude towards Gezi is well known. There is no doubt, however, that Gezi is being utilised as a pretext for the ensuing bans on protests. Notwithstanding an ECtHR judgment on the case, the harsh sentences and practices introduced during the Gezi trial mean to send a stark message against both civil society and other future potential protests.

“ The government’s attitude towards Gezi is well known. There is no doubt, however, that Gezi is being utilised as a pretext for the ensuing bans on protests. Notwithstanding an ECtHR judgment on the case, the harsh sentences and practices introduced during the Gezi trial mean to send a stark message against both civil society and other future potential protests. ”

A Chronology of the Gezi Trial

October 18, 2017:

Osman Kavala was detained at Atatürk Airport, Istanbul. He was not arraigned until November 1, 2017, as his detention period was extended.

November 1, 2017:

The Office of the Investigating Judge arrested Osman Kavala on charges of “attempting to change the constitutional order and overthrow the government” before he could testify at the Public Prosecutor’s Office.

August 3, 2018:

Previous repeated appeals by Kavala’s lawyers that his pre-trial detention be reviewed in a court hearing had been ignored and the review had been based only on the file as a result of which a decision to extend his detention was made. This time, the Court held a hearing, but neither Kavala nor his lawyers were notified, and the hearing was held with a lawyer appointed by the Istanbul Bar Association. And once again, the Court decided to continue Kavala’s detention.

November 16, 2018:

Executives of Anadolu Kültür Foundation, a non-profit organisation founded by Osman Kavala, were detained and previously acquitted members of Taksim Solidarity Platform were summoned to testify, and the civil society activist Yiğit Aksakoğlu was arrested on November 17, 2018.

February 19, 2019:

The indictment was prepared by the Prosecutor, one and a half years after Kavala’s arrest.

March 4, 2019:

The indictment was upheld by the 30th High Criminal Court of Istanbul.

May 22, 2019:

Finally announcing its ruling regarding the individual application filed by Kavala’s lawyers on December 29, 2017, The Constitutional Court, by a majority of votes, declared that there was “no violation”. The President of the Constitutional Court was among the judges who voted against the ruling.

June 24-25, 2019:

The first hearing of the case was held in the courtroom of Silivri Prison. Aksakoğlu was released but Kavala’s detention was continued. At the hearing, the presiding judge annotated the decision to continue the detention. The President and Turkey Adviser of PEN Norway were present in the courtroom to observe the hearing.

July 18, 2019:

The second hearing was held and Kavala was not released again. PEN Norway Turkey Adviser observed the hearing.

July 29, 2019:

The Council of Judges and Prosecutors assigned a second judicial panel within the 30th High Criminal Court of Istanbul and this second judicial panel took over the Gezi trial.

October 8-9, 2019:

The third hearing was held and Kavala’s detention was continued. PEN Norway’s Turkey Adviser was present at this hearing as an observer.

October 11, 2019:

Osman Kavala was ex officio released from the charge of Attempting to Overthrow the Constitutional Order, prescribed under Article 309 of the TPC and laid in the investigation file no. 2017/96115. His detention, however, was continued on the other charge.

December 10, 2019:

In its judgment regarding the application about Kavala's case filed on June 7, 2018, the European Court of Human Rights pointed out that the detention of Osman Kavala constituted a violation of Articles 5.1, 5.4 and 18 of the European Convention on Human Rights and ruled that his detention was a violation of his rights and that he should be released immediately.

December 24, 2019:

The Court did not implement the ECtHR judgment in the fourth hearing and decided to continue Kavala's detention. The Court justified this decision on the grounds that it was yet to receive the ECtHR judgement. PEN Norway's Turkey Adviser observed the hearing.

December 25, 2019:

A closed hearing was held in the absence of the defendants and their lawyers to hear the witness M.P. who the Office of the Public Prosecutor claimed to be one of the most important witnesses of the trial.

January 20, 2019:

Another closed session was held in the absence of the defendant's lawyers to hear the witness M.P.

January 28, 2020:

The fifth hearing was held. Refusing to implement the ECtHR judgement that ordered Kavala's immediate release, the court decided to continue his detention. The court was criticized for hearing the witness

M.P. twice in the absence of the defendants and their lawyers. The lawyers recused the judicial panel. Sezgin Tanrikulu, a Member of Parliament, was dismissed from the courtroom. The court rejected the justifications provided by the lawyers in their recusal application on the grounds that "they intended to prolong the hearing", and the lawyers left the courtroom. PEN Norway's Turkey Adviser observed the hearing.

February 06, 2020:

Submitting his opinion about the file during the hearing, the prosecutor demanded that all defendants be given life sentences.

February 18, 2020:

The 6th hearing of the case was held and the court acquitted the defendants on the grounds that there was no concrete and conclusive evidence against them.

The files of the defendants who were abroad were separated from the main case. The court ordered Osman Kavala's release. President Erdogan's take on the acquittal was "they attempted to acquit them with a maneuver". PEN Norway's Turkey Adviser and Secretary General observed the hearing.

On the very same day, the Office of Public Prosecutor of Istanbul issued an arrest warrant for Osman Kavala within the scope of the investigation no. 2017/96115 in which he was previously released ex-officio. On 19.02.2020, criminal court of peace once again arrested Kavala within the scope of the same file.

May 12, 2020:

The ECtHR rejected Turkey's objection to its violation judgement. That the arrest was a violation of rights and was politically motivated have now become final.

September 3, 2020:

The Committee of Ministers of the Council of Europe urged the implementation of the ECtHR's violation judgment regarding Kavala and his immediate release.

December 3, 2020:

The Committee of Ministers of the Council of Europe announced its interim injunction, urging the immediate release of Osman Kavala and the Constitutional Court to review the case in accordance with the ECtHR judgement without further delay.

December 18, 2020:

The first hearing of the case filed within the scope of the second indictment against Kavala was held at 36th High Criminal Court of Istanbul and the court ruled to continue Kavala's detention. PEN Norway's Turkey Adviser observed the hearing.

December 29, 2020:

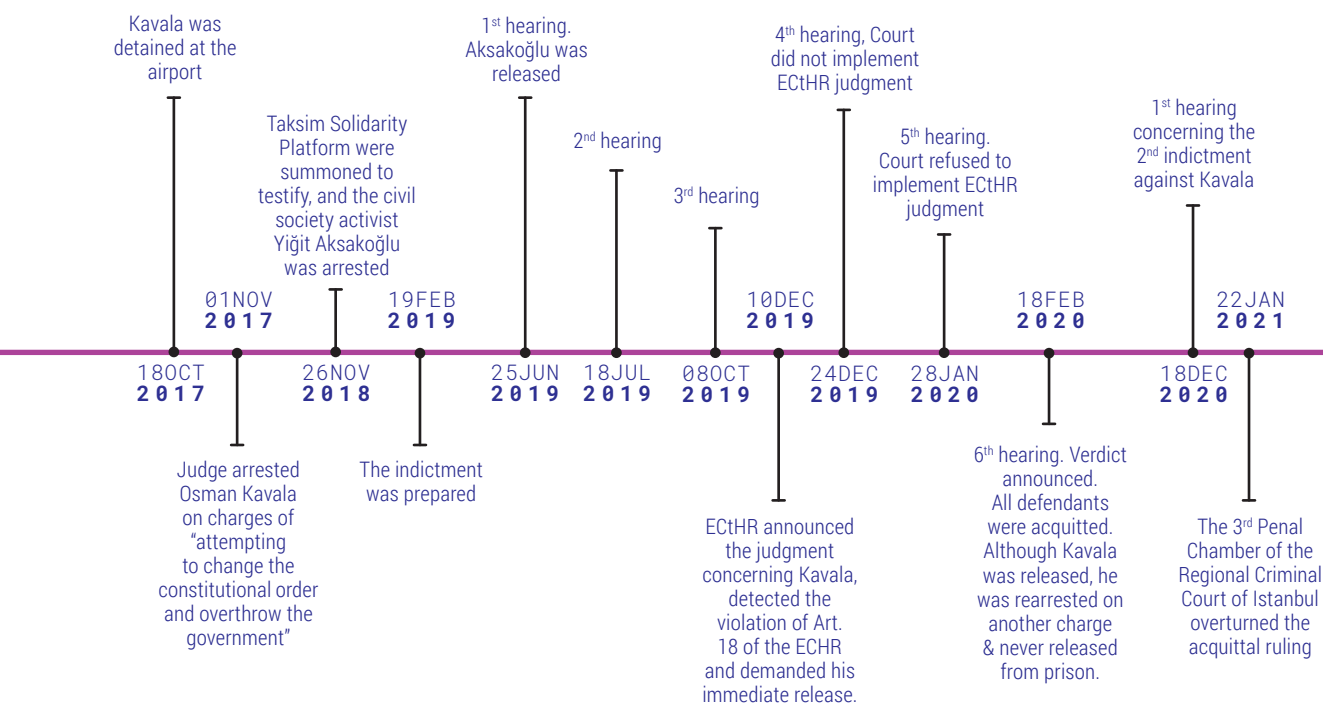
The Constitutional Court found no violation of Osman Kavala's right to personal liberty and security, which is enshrined in Article 19 of the Constitution. The judgment was delivered by a majority of 7 to 8 votes.

January 22, 2021:

The 3rd Penal Chamber of the Regional Criminal Court of Istanbul overturned the acquittal ruling which had been handed down for the Gezi case in 2020. The case was sent to the 30th High Criminal Court of Istanbul to be heard again.

February 5, 2021:

Held within the scope of the second indictment against Kavala, the second hearing of the case at the 36th High Criminal Court of Istanbul saw the court order Kavala's continuing detention and that the case to be consolidated with the main Gezi case that had been before the 30th High Criminal Court of Istanbul.



April 28, 2021

The separated file of the defendants who were abroad was consolidated once again with the main Gezi file. On the same day, the Court of Cassation overturned the verdict of acquittal on another Gezi Park protest-related case filed against the supporter group Beşiktaş Çarşı. PEN Norway's court reporter observed the hearing.

May 21, 2021:

The hearing was held at the 30th High Criminal Court of Istanbul which ruled to continue the detention of Osman Kavala on charges of espionage. The court decided to require the Çarşı file and Gezi file be communicated to the court which would return them after a review to consider the issue of merging both files.

June 9, 2021:

The Committee of Ministers of the Council of Europe announced for the first time that it would initiate an infringement procedure against Turkey unless the ECtHR's decisions regarding Osman Kavala were implemented.

June 15, 2021:

Writing a letter to the 13th High Criminal Court (the court hearing the Çarşı case), the 30th High Criminal Court of Istanbul requested the former's consent for the consolidation of Çarşı and Gezi files.

July 12, 2021:

13th High Criminal Court of Istanbul, where the Çarşı case was heard, did not consent to the merging of the two files and ordered such a consideration be made on the day of the next hearing, on 08.10.2021 when the statements of the defence counsels would be heard.

July 28, 2021:

During the judicial recess, the presiding judge of the 30th High Criminal Court of Istanbul, where the Gezi case was heard was temporarily assigned to the 13th High Criminal Court of Istanbul where the Çarşı case was heard. In his temporary office and in his capacity as the chair of the 13th High Criminal Court of Istanbul, the presiding judge ruled to consent the merging of two files. Thus, the presiding judge accepted the very request he had made in his previous office.

August 2, 2021:

The 30th High Criminal Court of Istanbul held the hearing on an earlier date, despite the fact that the designated hearing date of the Gezi case was August 6th. At the hearing held on August 2, the court decided to consolidate the Gezi and the Çarşı files, and ruled to continue Kavala's detention. The two files were consolidated at the 13th High Criminal Court of Istanbul.

September 16, 2021:

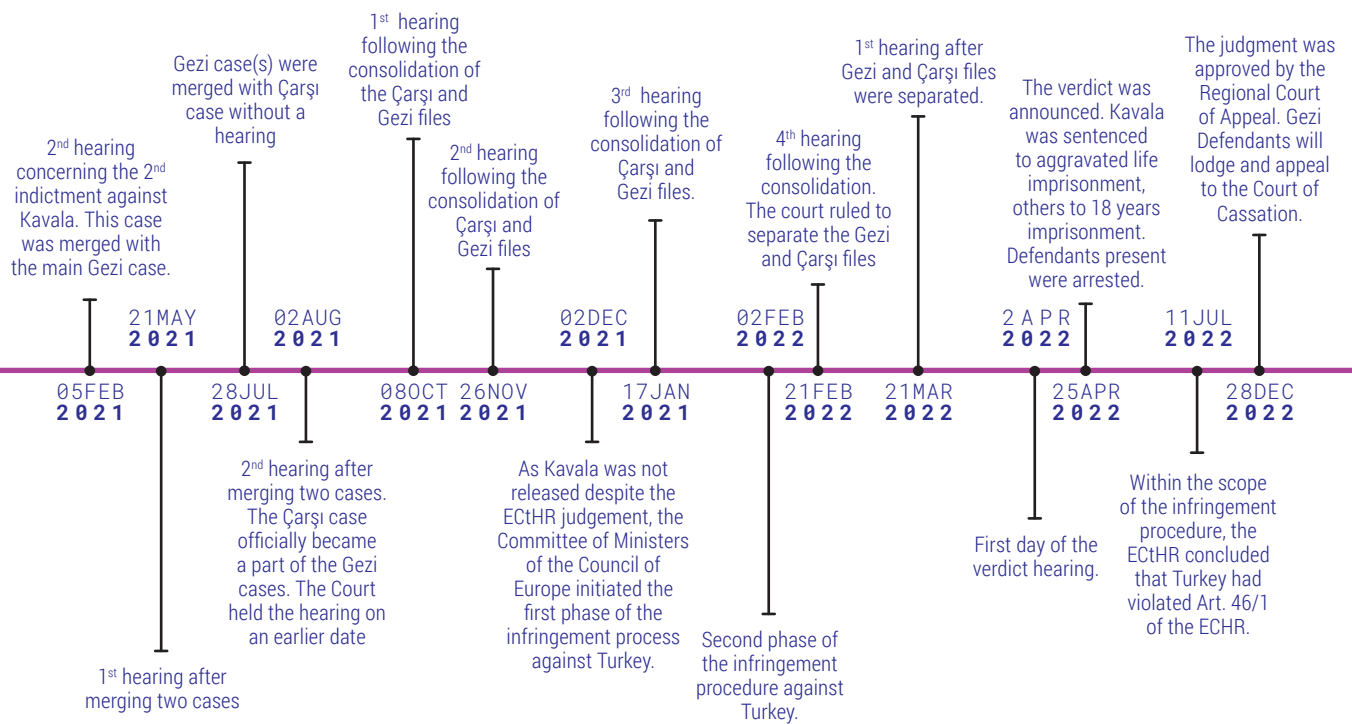
Before its meeting between 30 November and 2 December 2021, the Committee of Ministers of the Council of Europe reiterated its demand for the immediate release of Osman Kavala and the implementation of the ECtHR judgement. It warned that an infringement procedure would be initiated otherwise.

October 8, 2021:

The first hearing following the consolidation of Çarşı and Gezi files was held and the court ruled to continue Kavala's detention. PEN Norway's court reporter observed the hearing.

November 26, 2021:

The second hearing following the consolidation was held



and the court ruled to continue Kavala's detention.

December 2, 2021:

As Kavala was not released despite the ECtHR judgement, the Committee of Ministers of the Council of Europe initiated the first phase of the infringement process against Turkey.

January 17, 2021:

The third hearing following the consolidation was held and the court ruled to continue Kavala's detention. PEN Norway's court reporter observed the hearing.

February 2, 2022:

The Committee of Ministers of the Council of Europe announced that it has decided to proceed with the second phase of the infringement procedure against Turkey.

February 21, 2022:

The presiding judge of the 13th High Criminal Court of Istanbul was replaced. The fourth hearing following the consolidation was held and the court ruled to separate the consolidated Gezi and Çarşı files and to continue Kavala's detention. In addition, the court gave the public prosecutor time

to prepare his opinion on the Gezi case. PEN Norway's court reporter observed the hearing.

March 4, 2022:

The prosecutor submitted to the file his opinion in which aggravated life sentences were requested for Kavala and Yapıcı.

March 21, 2022:

Another hearing was held and the court ruled to continue Kavala's detention and gave the defence time to prepare their statements as to the prosecutor's opinion.

April 22 and 25, 2022:

In the final hearing of the Gezi case, the court ruled, by a majority of votes, to sentence Osman Kavala to aggravated life imprisonment for the crime of Attempting to Overthrow the Government of Turkey and Seeking to Obstruct the Conduct of Its Operations pursuant to Article 312 of the TPC and to arrest him for this crime, despite the fact that Kavala had been acquitted previously and that a final violation judgement had been handed down by the European Court of Human Rights. The court acquitted Kavala and ruled for his release of the charge of espionage which had been

the only allegation that had led to his detention for the last two years. In addition, the court ruled, by a majority of votes, to convict and arrest Ayşe Mücella Yapıcı, Çiğdem Mater Utku, Ali Hakan Altınay, Mine Özerden, Şerafettin Can Atalay, Tayfun Kahraman and Yiğit Ali Ekmekçi. All the defendants, except for Yiğit Ali Ekmekçi, were arrested in the courtroom. PEN Norway's Turkey Adviser, its General Secretary, former President and two other Board Members observed the hearing.

July 11, 2022:

The European Court of Human Rights concluded that Turkey had violated Article 46/1 of the Convention due to the fact that the country did not implement the ECtHR judgement dated December 10, 2019.

28 December 2022:

The judgment of the 13th High Criminal Court of Istanbul was appealed to the 3rd Criminal Chamber of the Regional Court of Appeals of Istanbul which rejected the appeal and the request to release the Gezi defendants, who are expected to bring the case to the Court of Cassation.

Legal Report on Indictment
Turkey v Osman Kavala & others
The Gezi Park trial

KEVIN DENT QC

Published: 9 October 2020.

PART A: INTRODUCTION

This legal report is drafted by Kevin Dent QC as part of the Turkey Indictment Project, established by PEN Norway, and represents an analysis of the indictment in the case of Turkey v Osman Kavala and others, popularly known as the “Gezi Park” trial. These proceedings concerned the prosecution and trial of 16 individuals (made up of civil society activists, lawyers, and artists) for their alleged role in the protests that took place in Turkey in 2013 against the redevelopment of Gezi Park, a green space in the center of Istanbul. These proceedings ostensibly ended in February 2020 with the acquittal of all nine of the defendants who attended their trial. It is understood, however, that the prosecution have appealed the acquittals and this appeal process has not yet concluded.

The lead defendant in the proceedings, Osman Kavala, who is a well-known philanthropist, former advisory member of the board of Open Society Turkey and civil society activist, successfully referred his case to the European Court of Human Rights (ECtHR). This court ruled, on 10 December 2019, that Turkey had violated Mr. Kavala’s rights under the European Convention on Human Rights (hereafter “ECHR”) in respect of Articles 5.1 (a lack of reasonable suspicion that Mr. Kavala had committed a criminal offence) article 5.4 (right to a speedy determination on the lawfulness of detention) and article 18 (limitation on the use of restriction of rights) and called for him to be immediately released.¹

Despite this, and in defiance of this clear judgment of the ECtHR, Mr. Kavala remains in detention and has now been detained for more than 1000 days. On 4 September 2020, the Committee of Ministers of the Council of Europe urged Turkey once again to ensure the immediate release of Mr. Kavala.²

The Bar Human Rights Committee of England and Wales (BHRC) observed the hearings of the trial as part of its international trial monitoring program and have reported extensively on the proceedings.³ This report draws on the experiences of BHRC in Turkey and in observing this trial in particular.

About the Bar Human Rights Committee of England and Wales

BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It has a membership of lawyers, comprised of barristers practicing at the Bar of England and Wales, legal academics and law students. BHRC’s Executive Committee members and general members offer their services pro bono, alongside their independent legal practices, teaching commitments and/or legal studies. BHRC also employs a full-time Project Officer and a part time administrator.

PART B: SUMMARY OF THE CASE AND INDICTMENT

The protests in 2013, which stemmed from plans to redevelop Gezi Park in central Istanbul, are already widely-reported and are well summarised in the ECtHR judgement. In September 2011, the Istanbul Metropolitan Municipal Council (Istanbul Büyükşehir Belediye Meclisi) adopted a plan to pedestrianise Taksim Square in Istanbul. This plan included blocking traffic routes around Taksim Square and rebuilding barracks (demolished in 1940) in order to create a shopping centre in the new premises. These barracks were to be built on the site of Gezi Park, one of the few green spaces in the centre of Istanbul.⁴

Professional bodies such as the Chamber of Architects and the Chamber of Landscape Architects brought administrative proceedings in an attempt to have this project set aside. In 2012, several demonstrations were organised to protest against the planned destruction of Gezi Park. Platforms bringing together several associations, trade unions, professional bodies and political parties, including the “Taksim Solidarity” (Taksim Dayanışma) collective, were accordingly set up to coordinate and organise the protests. Following the start of demolition work in Gezi Park on 27 May 2013, about fifty environmental activists and local residents occupied the park in an attempt to prevent its destruction. The protest movements were initially led by ecologists and local residents objecting to the destruction of the park. On 31 May 2013, however, the police intervened violently to remove the persons occupying the park. There were confrontations between the police and the demonstrators. The protests then escalated in June and July and spread to several towns and cities in Turkey, taking the form of meetings and demonstrations which sometimes led to violent clashes. Overall, four civilians and two police officers were killed, and thousands of people were wounded.

An outline of the indictment

The indictment was filed by the public prosecutor on 19 February 2019. It accused the defendants of having attempted to overthrow the government by force and violence within the meaning of Article 312 of the Criminal Code⁵, and of having committed numerous breaches of public order – damaging public property, profanation of places of worship and of cemeteries, unlawful possession of dangerous substances, looting, etc.⁶

The indictment is made up of three sections.⁷ In the first part, the prosecutor’s office set out the context underlying the Gezi events. It specified at the outset that it would present “elements which would show that the Gezi insurrection had been organised by Turkish “distributors” trained by Serbian “exporters” who were professional revolutionaries with financial support from the West”.⁸

In the second part of the indictment⁹, the prosecutor listed the acts that it accused the defendants of having committed prior to and during the Gezi Park events, and the evidence that it considered relevant. It alleged that the defendants had supported the Gezi insurrection, and that their aims had been to generalise such actions across Anatolia and to popularise so-called “civil disobedience”, with the aim of creating generalised chaos in the country. It claimed that this evidence showed that the Open Society Foundation, of which Osman Kavala was a former advisory Board member, had provided financial backing for the Gezi events. It also claimed that Osman Kavala and others organised secret and public meetings with persons who had played an active role in organising those events, and that he had cultivated relationships with several individuals with a view to setting up a media outlet.

In the third part of the indictment¹⁰, the prosecutor’s office referred, in particular, to the evidence that it had gathered in respect of the defendants other than Osman Kavala; included photographs of the symbols used and provided information about them; quoted from articles published during the Gezi events, submitted photographs of the damage caused by acts of vandalism, and summarised related events in areas outside of Istanbul.

PART C: ANALYSIS OF THE INDICTMENT

Executive Summary

The fundamental flaws in the indictment in the Gezi case have been effectively summarised by the ECtHR in *Kavala v Turkey* (ECtHR 429 (2019)) as follows:

This document, 657 pages in length, does not contain a succinct statement of the facts. Nor does it specify clearly the facts or criminal actions on which the applicant's criminal liability in the Gezi events is based.

It is essentially a compilation of evidence – transcripts of numerous telephone conversations, information about the applicant's contacts, lists of non-violent actions, some of which have a limited bearing on the offence in question.

It is important to note, as emphasized above, that the prosecutor's office accused the applicant of leading a criminal association and, in this context, of exploiting numerous civil-society actors and coordinating them in secret, with a view to planning and launching an insurrection against the Government.

However, there is nothing in the case file to indicate that the prosecuting authorities had objective information in their possession enabling them to suspect, in good faith, the applicant at the time of the Gezi events.

In addition, the prosecution's attitude could be considered such as to confirm the applicant's assertion that the measures taken against him pursued an ulterior purpose, namely to reduce him to silence as an NGO activist and human-rights defender, to dissuade other persons from engaging in such activities and to paralyse civil society in the country.

Further, BHRC concluded the indictment in this case was seriously defective and gravely flawed at an early stage during its trial observations.¹¹

At the heart of this 657-page indictment is the presumption that the Gezi Park protests were orchestrated by a single person or organisation. There is simply no evidence presented in the indictment to support that presumption, or that person was any of the defendants. The indictment was described by Mr Kavala as a "fantastic fiction" in his statement to the Court on 24th June 2019. BHRC concurs with this assessment, not least because it frequently appears to tout conspiracy in place of any credible or substantive evidence.

In place of a cohesive and well-structured narrative, there is endless repetition, grand political theorising and the expounding of conspiracy theories about Turkey and its role within Europe and the wider world. It is a profoundly ideological document and as such it is almost impossible for the public to understand or, crucially, one to which the defendants can properly respond.

Moreover, the indictment is a document which lacks crucial fairness and balance.

Instead the predominantly political thesis that runs through the indictment appears to be that;

1. The defendants organized the Gezi Park protests as part of an agreement by them to try and overthrow the elected government of Turkey by force;
2. The defendants sought to mask this attempt by pretending that it was really an environmental protest about a park;
3. Whilst the defendants always expressly declared support for non-violent protest, they were secretly advancing violent ends;
4. Despite their declared support for and calls for the protest to be non-violent, they were secretly orchestrating those who were carrying out acts of violence at the protests;

5. By doing so, the defendants were carrying out the orders or directions from powerful forces outside of Turkey, who were seeking to de-stabilise the country;
6. Otherwise perfectly lawful contact between the defendants and NGOs and European bodies was actually part of this secret coordinated plan, directed by forces outside of Turkey.

The key factual deficiency in the indictment is not only that it presents such a theory but, despite its length, that it does not ever connect such theories to concrete evidence. Moreover, it does not objectively consider or analyse the volume of evidence that runs contrary to such a thesis. As such, the indictment does not consider or evaluate in a balanced way even the possibility that;

1. The defendants supported the protests, but only in so far as they involved non-violent means;
2. The defendants only ever advocated non-violent means;
3. That different members of the public supported the Gezi Park protests for a variety of different reasons and, in doing so, were expressing their own myriad of views, values and concerns rather than simply being followers manipulated by the defendants and/or forces outside of Turkey;
4. That the violence at the protests may have been conducted by elements who infiltrated the protests, from various groups with their own aims and agendas, different and separate to those of the defendants;
5. And/or that the violence used may, to some degree, have been a spontaneous reaction to force used by authorities in seeking to dispel protests;
6. That the various meetings and communications, involving the defendants and NGO's and European groups and bodies referred to in the indictment, were part of the everyday lawful business of NGO's and civil society activists.

The failure to consider such possibilities renders the indictment wholly lacking in balance. As such, even just for this reason, it is manifestly defective.

Further, there are other significant flaws, namely that:

1. It is highly repetitive; theories are expounded a number of times without explanation as to why they are repeated or, indeed, mentioned at all;
2. It is excessive in its length. Although the allegations are complex ones and calling for detailed exposition, there is no need for it to be 657 pages long. The defect is not insignificant; for both the judges evaluating the evidence and the lawyers seeking to test and challenge it, the sheer volume of the indictment would make that task much more difficult;
3. Notwithstanding that this is a public prosecution, the indictment lists 773 complainants, including Recep Tayyip Erdogan and the entire Turkish cabinet. It is very difficult to ascertain any legitimate legal requirement to include so many plaintiffs. In the absence of any proper reason for this (and none is ascertainable), this appears an overtly political gesture; to seek to present the case as one being brought by the aggrieved masses of Turkish society, who are structurally co-joined with the government in seeking to prosecute the defendants;
4. Indeed, the 440th listed complainant is Mevlut Saldogan, a police officer who was convicted of unlawfully killing 19-year-old Gezi protestor Ali İsmail Korkmaz. The portrayal of an officer convicted of unlawfully killing a protestor as an 'aggrieved' party in an indictment is hard to countenance in a democratic society. Indeed, Saldogan had already been sentenced to 10 years' imprisonment for the killing before the indictment had been presented.

Further and crucially, there are elemental legal flaws in the indictment in terms of its lack of adherence to international human rights law, particularly in its approach towards peaceful and lawful activity in relation to the rights of freedom of association and expression, rights essential to the preservation of a democratic society. This is explored further below.

Evaluation of the indictment in terms of Turkish Laws

The indictment is evaluated in this report by reference to Article 170 of the Turkish Criminal Procedure Code, which concerns the duty of filing a public prosecution:

Article 170

1. The duty to file a public prosecution rests with the public prosecutor.
2. In cases where, at the end of the investigation phase, collected evidence constitutes sufficient suspicion that a crime has been committed, then the public prosecutor shall prepare an indictment.
3. The indictment, addressed to the court that has subject matter jurisdiction and venue, shall contain:
 - a. The identity of the suspect,
 - b. His defence counsel,
 - c. Identity of the murdered person, victim or the injured party,
 - d. The representative or legal representative of the victim or the injured party,
 - e. In cases, where there is no danger of disclosure, the identity of the informant,
 - f. The identity of the claimant,
 - g. The date that the claim had been put forward,
 - h. The crime charged and the related Articles of applicable Criminal Code,
 - i. Place, date and the time period of the charged crime,
 - j. Evidence of the offence,
 - k. Explanation of whether the suspect is in detention or not, and if he is arrested with a warrant, the date he was taken into custody and the date of his arrest with a warrant, and their duration.
4. The events that comprise the charged crime shall be explained in the indictment in accordance to their relationship to the present evidence.
5. The conclusion section of the indictment shall include not only the issues that are unfavourable to the suspect, but also issues in his/her favour.
6. At the conclusion section of the indictment, the following issues shall be clearly stated: which punishment and measure of security as foreseen by the related Law is being requested to be inflicted at the end of the adjudication; in cases where the crime has been committed within the activities of a legal entity, the measure of security to be imposed upon that legal entity.
7. This report considers firstly the formal aspects of the indictment and whether the indictment conforms to these formalities. It then considers the key qualitative requirements of the indictment, as set out under Article 170(4) and (5), namely whether the charges are properly explained in the indictment and whether the document has the required balance.

Article 170 (2) – Is there enough evidence constituting sufficient suspicion that a crime has been committed prior to filing the indictment?

It is worth noting at the outset, however, in respect of 170(2) and the requirement that before an indictment is filed there is evidence constituting sufficient suspicion that a crime has been committed, the ECtHR came to the clear view that there was no evidence that gave rise, in good faith, to a reasonable suspicion that an offence had been committed.¹²

As such the indictment is arguably legally defective as a whole, in that the investigation had not uncovered sufficient evidence that a crime had been committed and that, therefore, it was a breach of

Article 170(2) to file such an indictment. In short, this was an indictment that should never have been filed because there was no evidence that, in good faith, could support it.

Although this is a fundamental aspect, the primary purpose of this report is not to comment on the weight of the evidence, or lack of it. There are two reasons for this. Firstly, this issue has already been resolved. Both the ECtHR and the judges of the Gezi Park trial came to the view that the evidence gathered did not support the allegation charged. Secondly, the analysis in this report focuses upon the other aspects of the indictment; whether it conforms with legal formalities, clearly sets out and explains the evidence on which charges are brought and presents the evidence in a balanced way. It further sets out a summary and analysis of the international law standards applicable.

Article 170 (3) – Does the indictment comply with the formalities required?

The indictment conforms with the requirements under Article 170 in respect of a number of formalities. It clearly sets out the identity of the suspects. It does not detail who the defence lawyers representing the suspects are, but no criticism is made of this as it may not have been known by that point who were representing the defendants. The indictment does, however, clearly set out the remand status of the defendants as required, indicating when they were arrested and/or detained.

The indictment also sets out the names of over 700 'injured parties' or complainants, although it does not set out in respect of all of these people who they are and/or how they have been injured.¹³ A number of plaintiffs are listed as such but without explanation in the indictment as to nature of their injury. The same can also be said for the 27 names of the members of the Turkish cabinet named as aggrieved parties. What, for instance, the defendants and/or the Gezi Park protests had to do with Veysel Eroglu, the 61st Government Minister of Forestry and Water Works, is not explained in the indictment.

Regarding identities of informants, there are three references in the indictment to informants¹⁴, but no names are provided. Again, no criticism is made of this as there may be legitimate law enforcement reasons why the identities of these informants are not revealed. Indeed, at section 2.1.9.1. a person named Murat Papuç is referred to as having provided information in a role akin to that of an informant. Although this individual was to become a controversial figure in the trial and subject to adverse comments by the ECtHR¹⁵, he is correctly named here in the indictment, in accordance with 170(3)(e).

The crime charged here, being under Article 312/1 of the Turkish Criminal Code and ancillary offences, is set out in the introductory section. The indictment does not, however, set out the various elements of an offence under Article 312/1, nor what is required to be proved and/or any applicable statutory defences to the charge. In the context of this indictment, this is not merely a formal defect; setting out clearly the elements of the offence and what must be proved is an effective and reliable way for a prosecutor to consider and/or check for him or herself whether all aspects of a charge can be proved and/or whether certain defences may apply.

The indictment refers to various other Articles under the Turkish Criminal Code which it says are applicable, but does not set out how they are applicable. It also does set out the date of the crime alleged as 'before 2014'. This could be said too vague and lack particularity, but it is perhaps explained by the fact that the Gezi protests took place on a number of different dates during the course of 2013.

It follows that there is only limited adverse comment in relation to these basic formalities in the Gezi indictment. In general, it conforms with the Code in this respect.

Article 170 (4) – Does the indictment properly explain the crime alleged and the evidence establishing the offence?

In this respect, the indictment is seriously defective. There are different aspects of concern, which are here broken down into different headings as follows:

A political indictment

The indictment presents a number of grand political (conspiracy) theories which appear to have replaced

any objective, forensic and legal analysis of the evidence. It should be acknowledged that the subject matter of the indictment is to a degree political, involving an allegation of an attempt to overthrow the political order by force. Therefore, it is at least understandable that the indictment would make reference to political institutions and instruments of government.

In such a case, however, it is even more important to forensically examine the evidence and present it in a clear way, free of political ideology and animus. If the evidence supports such a charge, it should be possible to present it in a clear and concrete way. Here, however, we have the opposite; conspiracy theory appears to have substituted itself for evidence. For practical purposes, this report considers only a few examples of the very many amidst the 640 or so pages of the (translated) indictment.

One such example can be found in the introduction section (Page 24/640), which makes comments about the Arab Spring:

The Arab Spring is a movement with major political consequences that occurred in the Arab world. This is a common name given to a public movement in the Arab regions that started in 2010 and still continues at the present. The Arab spring emerged from the democracy, freedom and human rights demands of the Arab people it is a regional, societal, political and armed movement. Protests, meetings, demonstrations and internal conflicts took place. The people overtook governments in the name of freedom... In our country, as a different reflection and adaptation of these events, the suspects, about whom the indictment has been prepared, used the protests against the transferring of some trees in the Taksim Gezi Park within the scope of the Istanbul Taksim Region Pedestrian Area Creation project on 27 May 2013 to turn the event into violent demonstrations throughout the country and an attempt against the government through provocation.

Another passage (25/640) is typical, suggesting that the aim of the defendants and the protests was to bring down the elected government, but without indicating the evidence which supports this thesis:

It has been determined based on the evidence obtained in the investigation and the events that have occurred throughout the country in general that these actions did not occur randomly, they were conducted with organisation in a systematic and planned manner, that despite being portrayed as democratic rights and innocent protests, they actually aimed to create chaos and disorder throughout the country and remove the Republic of Turkey government or prevent it from carrying out its duties by these means with the intention of launching an armed revolt against the Republic of Turkey Government.

The indictment frequently advances the highly political theory that the Gezi Park protests were orchestrated by international powers but without indicating the evidence to support this. For instance, one passage (26/640) reads:

The fact that Gezi Park Demonstrations (Attempts) process matches exactly the events that occurred in Eastern Block and Arab countries where civil conflicts led to revolutions shows that the events that occurred in our country were orchestrated with the support of international entities.

Elsewhere, the political theories of unnamed others are presented as facts. One such passage (26/640) reads:

The influence of SOROS on the Gezi Attempt was greatly discussed both in the press and in political and academic circles; therefore, it is clear that George SOROS, the founder of the Open Society Institute, was influential in the Gezi Attempt that occurred in our country, just like he was in the other countries where uprisings took place.

In numerous instances, the indictment contains references to a global conspiracy on a grand scale. At (91/640) the indictment reads:

This has been stated by Government members and a variety of people and organisations through the press and also in the statement of Can PAKER, a former chairman of the Open Society Foundation who used to be a member but later departed from the foundation, as follows; "George SOROS, President of the Open Society Foundation, forces the foundation to act according to Israeli policies because he is Jewish, and has also pushed opposition against the AK Parti government during the Turkey-Israeli crisis."

This clearly shows the influence and guidance of the Open Society Foundation in these events.

The relevance of George Soros being Jewish, nor the influence of Israel on these events, is entirely unexplained. No evidence is presented in support of such a theory. Perhaps more crucially, how is the court supposed to evaluate this point and how are the defence able to challenge it? On its face, it is another example of baseless—and inherently prejudicial and discriminatory—political theory.

By way of further example, it is consistently advanced that the Gezi protests were organised by 'global capital' to undermine Turkey. At (89/640) the indictment reads:

It is understood from this that the forces behind OTPOR or its derivatives that rule global capital, are making attempts towards governments that do not accept the political maps of regions like the Middle East that do not think like them, that do not serve at their bidding or what they are trying to force on the countries of the world; and that the objective of these forces is not to establish democratic governments.

Further, at (89/640), the indictment continues:

It is obvious that these forces are hypocritical in severe police response to demonstrations in countries that are locomotive powers like Europe and America, where they are trying to branch out in a similar way because when it comes to Islamic regions or countries against globalization, they exaggerate the events through the media and supposed democratic leaders who make themselves heard and try to work the situation to suit their own political purposes. The events surrounding the Gezi attempt must also be considered within this global ideology that has been explained above, and to a certain extent, the demonstrations were successful; and it appears that the objective was to wear down the Justice and Development Party and the Prime Minister of the Republic of Turkey, Recep Tayyip ERDOĞAN in particular.

Once again it is unclear how a court is in a position to evaluate such a political proposition or how the defence could be said to be able to challenge it. Instead, such comments provide evidence that this indictment proposes a political rather than legal-criminal trial and was advanced, as the ECtHR concluded, for political purposes.

Further passages of the indictment suggest the Gezi events are, somehow, connected to a global bid to suppress Turkey's bid to host the Olympic games (272/640):

IMAGES IN FOREIGN MEDIA

As observed, foreign press publications sent their reporters to our country to cover the uprising. Their reports made headlines due to their exaggerated nature. To prevent our country from hosting the 2020 Olympics, they ran smear campaigns on social media by distributing handouts and pasting flyers around about the events in various countries.

Once again, on page 89/640, one of many passages which, without explanation, are set out in capitals. This seeks to portray the Gezi events as part of a global conspiracy:

IN THE LIGHT OF THIS INFORMATION, IT IS APPARENT THAT THE GEZI ATTEMPT WAS GUIDED AND ENCOURAGED BY STRUCTURES WITH GLOBAL GOALS THAT COULD DISSOLVE ARMED TERRORIST ORGANIZATIONS AND LEGAL AND LEGAL APPEARING ILLEGAL ENTITIES WITHIN THEIR STRUCTURE AND TAKE CONTROL OF THEM, ANALYZE THE SOCIAL FORM VERY WELL AND INFLUENCE THE PUBLIC IN LINE WITH THE PERCEPTION THEY CREATED. IT IS APPARENT THAT THE GEZI ATTEMPTS WERE ACTIONS ORGANISED IN THE WAY WE HAVE TRIED TO EXPLAIN, ORCHESTRATED BY THE SUSPECTS IN THE INDICTMENT AND PRESENTED ON STAGE. THE FACT THAT THESE INCIDENTS ARE NOT EXPERIENCED IN MANY COUNTRIES OF THE WORLD IN THE EXISTING POLITICAL STRUCTURE THAT ARE GOVERNED BY ANTI DEMOCRATIC METHODS OR KINGDOMS BUT ARE CONSIDERED THEIR ALLIES OR STRATEGIC PARTNERS SUPPORTS THIS THESIS.

It cannot be overlooked that such comments are likely to have a profound effect on the fairness of the subsequent proceedings. When an indictment is so firmly rooted in the political ideology of a ruling political party, for the judges under a duty to evaluate it, any rejection of such an indictment through

acquittals becomes a perilous course, tantamount to a repudiation of this ideology. Indeed, it is of grave concern that the judges who acquitted the Gezi Park defendants in February 2020 were immediately put under investigation following the verdicts.

The acquittals were later described by the President of Turkey as a 'maneuver', which clearly reflects the real dangers of loading an indictment with political ideology.

Another adverse effect of this political theorising is that it obscures any proper objective analysis of the evidence because to do so would represent doubt or criticism of the ideology.

For all the reasons above, the indictment reads more like a blunt attempt to silence any opposition within Turkish civil society. Such an indictment, and its pursuit by prosecutors, is not consistent with a plural democracy where the rule of law is observed.

Lack of clarity and coherence

Another key failing is the lack of clarity and coherence in this indictment, which renders it almost impossible for the defendants to properly understand and challenge the case against them and as such to have a fair trial.

In particular, there are a number of rambling and unexplained comments that litter this indictment and appear to be wholly unconnected or relevant to any of the charges. The following passage from the introduction section (page 24/640) is typical. It concerns a record of conversation between two suspects:

For the purposes of explaining the gravity of the actions that are the subject of our indictment, which was a movement started in 2011 and attempted to be placed on stage in May of 2013, referred to as the Gezi Park events by the public but was actually an action of attempt; we will explain how in a telephone conversation between the suspects Mehmet Osman KAVALA and MEMET ALİ ALABORA (ID: 2189170193) Mehmet Osman KAVALA said "...THE EUROPEANS ARE ASKING AT EVERYTHING I SEE THAT'S ALL FINE AND WELL BUT HOW WILL THIS CHANGE THE POLITICAL SITUATION..." and also Memet Ali ALABORA said on the social media "THE ISSUE IS NOT JUST GEZI PARK MY FRIEND, HAVE YOU STILL NOT UNDERSTOOD THIS" indicating both suspects were functioning as INFLUENCERS posting provocative shares.

The significance of the such an ordinary conversation asking how the protests may affect the political situation, at least on its face, is nowhere explained, nor shown how this is connected to a social media post made by one of them.

The connection, if any at all, is simply not made.

It is a common feature of this indictment that broad, and unsubstantiated comments and accusations are made, without any evidence in support. For instance, there is a comment (31/640) about trips made by Osman Kavala and the suggestion that these were for the purpose of organising the protests with foreign entities, but entirely unevidenced, over and above the fact that he went to those places. On the face of it, therefore, ordinary lawful travel is criminalised, without any explanation:

Therefore, it has been determined that the group was receiving training on civil uprising from OTPOR director Ivan MAROVIĆ while they were in Cairo while Mehmet Osman KAVALA was travelling as mentioned in Belgium, Germany and the United States to coordinate another aspect of the attempt.

In the same vein, a comment is made (38/640) to the effect that Osman Kavala visited Hungary and that George Soros is active in that country, to suggest that this provides evidence that the trip to Hungary was for the purpose of some criminal activity involving him and George Soros, but without providing any evidence over and above the fact of the trip. Thus, the act of travelling to a country is, without explanation, criminalised:

Mehmet Osman KAVALA went to Hungary between 05 April 2012-06 April 2013, and it was understood that this trip happened right before the Gezi protests, that the founder of the Open Society Foundation,

George SOROS is very active in this country, and had to move the foundation university in this country to another country due to similar allegations during the preparation of the case file; and it was understood that the suspects' travel was a coordination trip for the Gezi protests.

The flight records of various defendants and other named individuals are reported on, but without any attempt to explain the relevance of the trips. The following (37/640) is typical:

Mehmet Osman KAVALA went to France between 15 November 2012-18 November 2012, Mehmet Osman Kavala traveled to France on flight number TK1823 on 15 November 2012, and suspect named Meltem Aslan Çelikkian (TC: 19489865864) who had a decision of separation of the case also traveled to France on the same plane.

Either the travel to France is linked by evidence to the Gezi Park protests, in which case this should be provided for in the Indictment, or it is not, in which case it should not be included.

One section of the indictment seeks to demonstrate similarities between 198 methods of non-violent protest described by an American academic Gene Sharp in a book and the Gezi Park protests, in order to show how the events were part of a pre-ordained playbook. Leaving to one side that the author of the Indictment seems at no point to have reflected on the very significant irony, in the context of the charge under Article 312, that these were forms of non-violent protest, this leads to a number of bizarre passages in the indictment. One of the 198 forms of non-violent protest involves staying at home and, in this light, the author presents the evidence of one defendant (54/640) staying at home during the Gezi Park protests as evidence of his participation in them:

WITHDRAWAL FROM THE SOCIAL SYSTEM

Staying at Home (Many people, mainly Mehmet Ali ALABORA did not leave the house for a while during these events.)

Other items on the list of 198 forms of non-violent protest are merely listed but without any explanation of how they occurred during or relate to the Gezi Park protests:

LIMITED STRIKES

108. Detailed Strike

109. Buffer Strike

110. Slowdown Strike

111. Slowdown of Work by Abiding by the Rules

112. Not Going to Work by Taking a Sick Report

113. Resignation Strike

114. Limited Strike

115. Selective Strike MULTIPLE-INDUSTRIAL

Other forms on the list of 198 are commented on in a selective way. For instance, in a section on 'symbolic sounds' comment is made about people going onto balconies at 9pm to make sounds with kitchenware in support, but without mentioning that this is a form of protest that has been used historically in Turkey for a number of years (51/640):

28. Symbolic Sounds

(From the first day of the events until the last, in many regions of the country, particularly our city, people went out to their balconies around 9 pm, and made noises with their kitchenware to support Gezi protests.

In this section, fairly banal comparisons are included as somehow relevant. For instance, one of the 198 forms concerns support of the protests by musicians. The following is included:

36. Plays and Music Events (Many music bands such as Kardeş Türküler and Duman composed songs, Roger Waters' "The Wall" concert tour displayed the photos of people who died in Istanbul during the riots.) Logical questions immediately arise: How are Roger Waters' actions on his concert tour reasonably capable of providing support for the thesis that these defendants were involved in

an attempt to overthrow the Turkish Government by force? It is difficult even to countenance that the public prosecutor sought aggravated life sentences on the basis of such allegations contained within this indictment. That individuals have spent considerable time in detention on the basis of it is unsupportable.

The lack of balance and reflection in such comments is telling. Having considered all 198 forms of non-violent protest, without indicating how a large number of them apply to Turkey and Gezi Park, the following comment is made in the indictment:

All of the 198 Passive Action Methods stated in GENE SHARP's "From Dictatorship to Democracy" book were used in different ways in the Gezi Uprising in our country.

Nowhere is there a comment or reflection in the indictment that any similarities between the Gezi protests and a handbook for non-violent protest might actually be an indication that the primary aims of the protests were non-violent.

In some parts, records of conversations between defendants are referred to but with no reference to their date in order to understand their context or meaning, whether they are before, during or after the Gezi events. This (94/640) is typical:

Also in the phone call between MEMET ALİ ALABORA and MEHMET OSMAN KAVALA on this subject (ID: 2189170193) Mehmet Osman KAVALA was detected saying "AT SOME POINT LIKE ABOUT WHAT THIS EVENT IS GOING TO LEAD TO IN THE FUTURE, LIKE THESE EUROPEANS KEEP SAYING FOR EVERYTHING I SEE THAT'S ALL WELL AND GOOD BUT HOW WILL THIS CHANGE THE POLITICAL SITUATION THEY KEEP ASKING. SHOULD WE AT SOME POINT, A FEW FRIENDS, SIT DOWN AND TALK ABOUT THIS?"

The context of these comments is entirely unclear and incapable of logical evaluation. Equally, it is entirely unclear how passages like this are claimed to provide any support for violent purposes.

There are a large number of comments in the indictment which are made unsupported by or connected to any evidence (94/640):

When considered with all the collected evidence, it is apparent that the suspects were in contact with each other, that there were relations based on a hierarchy, although loose, and delegation of duties between them.

A great number of portions of the Indictment appear to lack any rational or relevant connection to the apparent charges. In one example(97/640), significance is given to a 2005 newspaper article where Osman Kavala is referred to as the "Turkish Soros." This is, somehow, considered relevant:

An Interesting Portrait: "Turkish Soros" who met with the Prime Minister: Osman Kavala: There was someone with the "businessman" in his title among the delegation that met with the Prime Minister last Wednesday: Osman Kavala. Among journalists, authors, poets and intellectuals—a 'businessman' was searching for contact with the Prime Minister concerning the 'Kurdish Problem'...Osman Kavala was probably a businessman with intellectual aspirations!

The indictment frequently refers to meetings involving the defendants and various individuals or groups outside of Turkey. The relevance of these meetings and how they indicate support for violent means is never explained. This passage (148/640), concerning meetings months after the Gezi Park events, is typical:

Based on Communication ID: 2453774465 on 22 November 2013 at 15:58, in which MEHMET OSMAN KAVALA (905322221xxx) called ASENA GÜNAL (905336859xxx), the text read: "Asena hi, there is a possibility that the socialist group leader Swobodan from the European Parliament might come to the exhibition. This may be either at 19.30 or 21.30-22.00. It will become clear at 19:00. I'll call you. How is your part doing?"

Another theme within the Indictment is the suggestion that certain pronouncements made by the

defendants are false or represent disinformation, but without providing the evidence that they are false. Consider this passage (178/640):

It was determined that, after the start of the riots, the members of Taksim Solidarity were engaged in significant disinformation using written, visual and social media with statements such as “they are declaring a state of siege”, “intensive gas and water sprayed with (anti-riot) water cannon vehicles”...that they shared many fake news on purpose, that they were engaged in provocative activities, abusing the sensitivity of the public, thus provoking the public to participate in illegal acts and protests against the security forces.

Additionally, the Indictment seeks to make a connection between the Gezi Park protests and the attempted coup three years later in 2016 (230/640). How this is relevant to the defendants is left entirely unclear and, consequently, would be impossible for the defence to challenge or the court to evaluate:

In the light of this information, one can conclude that, at the time, with the Gezi uprising intending to spread across the country as far as possible, the armed terrorist organisation FETÖ/PDY saw the uprising as an opportunity for itself. In the event that such uprising should succeed, resulting in the resignation of the government or early elections, the organization hoped to benefit from such a result. Shortly after the Gezi Park protests failed and no such uprising was expected to repeat itself as an uprising with sympathetic coverage as the Gezi Park events, aiming at the government, the organisation, which considered the government of the Republic of Turkey a danger to itself, initiated a judicial coup against it on 17-25 December along with the conspiracy investigations. Afterwards, hoping to prevent re-election/re-nomination of the current President of the Republic of Turkey Recep Tayyip Erdoğan, who acted as Prime Minister at the time, just as it has been achieved by the same formation abroad, on 15 July 2016, when they made an attempt against his life, the organization frustrated any effective, proportional, and appropriate interventions in the uprising viewed sympathetically as the Gezi Park events through its cells within the security circles.

Otherwise, if needed, it intervened inappropriately and disproportionately to draw the society's justified reaction and to incite with the intention of setting ground for creating the perception of this group's victimisation. Thus, in terms of their ambitions, the armed terrorist organisation FETÖ/PDY hoped to pacify the current President of the Republic of Turkey Recep Tayyip Erdoğan, who acted as Prime Minister at the time and whom the organisation viewed as their main obstacle, and then to take over the government by means of its militants, sadly present in almost every office of the government. As this attempt failed, the organisation decided to take the stage by itself, first as the 17-25 December coup attempt and then as the second 15 July 2016 attempt.

The indictment reaches, at points, the furthestmost boundaries of irrelevance. At page (289/640), the indictment refers to an image of a map found on Osman Kavala's mobile phone as follows:

In the examination of the suspect's mobile phone: there has been obtained a photograph taken by the suspect's mobile phone on 27 February 2016, depicting the borders of the Republic of Turkey that were redrawn, thereby breaking its integrity.

Once again, it is not possible to identify or understand the point being made in this passage of the indictment and accordingly to challenge it.

The cumulative effect of these, and many similar passages, is that it is almost impossible to find or evaluate any coherent or logical evidence that actually supports the charges. Indeed, when you look underneath the political theorising, unsubstantiated and irrelevant points, the repetition and the verbiage, there is a total lack of concrete evidence to connect the defendants to a charge that they attempted to overthrow a government by violent means.

There are a number of possible explanations for the inclusion of all this irrelevant material. Either the author or authors of the indictment got so carried away with the political theorising, and their belief in the soundness of the political ideologies underpinning it, that they failed to properly and objectively analyse the evidence gathered, or the endless repetition and inclusion of irrelevant material is actually a deliberate attempt at obfuscating and masking the lack of any cogent evidence. Either way, it is clear that Turkey has failed to comply with proper legal prosecutorial standards in the preparation and formulation

of the indictment in this case.

Article 170 (5) – Does the indictment properly balance evidence both favourable to and unfavourable to the defendants?

This Article requires the indictment to have balance and to weigh points both favourable and unfavourable to the suspects. This is no more than to reflect the general norms as set out in Principles 13(a) and 13(b) of the Basic Principles on the Role of Prosecutors and Article 3 of the Standards of the International Association of Prosecutors. Article 3 states that:

Impartiality

Prosecutors shall perform their duties without fear, favour or prejudice. In particular, they shall:

- 3.1 carry out their functions impartially;
- 3.2 remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;
- 3.3 act with objectivity;
- 3.4 have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

Unfortunately, such balance is nowhere to be found in this indictment.

There are a number of aspects to the evidence that require comment and evaluation in the indictment in order for there to be due balance, aspects which are entirely absent here. They include:

1. None of the many comments made by the defendants referred to in the indictment indicate any support for violent means of protest. This point is of profound significance as the sources of the indictment include intercepted communications involving the defendants and emails between them and others. If, despite all of this, not a single comment (public and private) is found where support for violence is indicated, this would be an important matter to be made clear in the indictment and would require careful rebuttal;
2. On the contrary, there are a very large number of comments (public or private) referred to in the indictment that indicate support for purely non-violent means of protest. This is neither acknowledged nor commented on;
3. Likewise, the significance of any similarities between the Gezi protests and a book espousing 198 forms of non-violent protest is not evaluated or commented on in the context of an allegation under Article 312 of the Turkish Penal Code;
4. There is nowhere to be found any evaluation of the possibility that acts of violence committed by some at the Gezi Protests were actually carried out by groups not in any way associated to the defendants and/or their civil society groups;
5. There is nowhere to be found any evaluation of the possibility that different people took part in or supported the Gezi Park protests for many different reasons, including the defendants;
6. There is no balanced evaluation of the possibility that various trips abroad were in support of legitimate activities, indeed the contrary assumption is made;
7. Much is made of attempts to purchase or obtain gas masks during the protests but there is no evaluation as to whether this was actually a defensive measure as protestors were being tear gassed, consistent with human rights activism. On the contrary, it is presumed in the indictment that this is an indication of support for violence;
8. There is no balanced assessment of whether meetings with European civil rights groups and parliamentarians were in pursuit of lawful aims and/or legitimate lawful criticisms of the Turkish Government and its handling of the Gezi Park protests. On the contrary, this activity is cast within a presumption that this is all in pursuit of a global criminal conspiracy. Within this framework, all criticism is criminalised;
9. Much is made of an attempt to make a video, after the events, about the Gezi Park protests after the event but there is no balanced assessment as to whether this is part of legitimate lawful criticism of the government and the exercise of rights of freedom of expression;

10. The indictment suggests that the defendants all acted together as part of a group with defined agreed aims with an informal hierarchy, but the indictment never balances this an analysis of the possibility that different defendants had different motives, nor comments on the lack of evidence to suggest that they were a concrete group;
11. The activities of certain NGOs and civil society groups are all cast within a framework that presumes them to be involved in illegitimate criminal activity. Neither the contrary possibility, that these were legitimate lawful groups conducting ordinary civil society activism, nor the lack of evidence that they were involved in criminal activity, is ever commented on;
12. No assessment or comment is made about some defendants having already been acquitted on previous charges relating to the Gezi Park events;
13. No assessment or comment is made to the effect that none of the defendants are ever seen to be involved in acts of violence or present at the protests and inciting them.

This profound lack of balance runs through the 640 pages of the (translated) indictment. As such, it is impossible to illustrate all the examples of this within the framework of this report. The following represent, therefore, merely a couple of examples of very many, and are indicative of the predominant approach that runs throughout the indictment:

One passage contains a recording of a conversation involving two defendants where they discuss engagement with Human Rights bodies in relation to an embargo regarding the use of gas canisters (122/640):

MEHMET OSMAN KAVALA (90532xxx xxxx) called YİĞİT ALİ EKMEKÇİ(90532xxx xxxx) said, "Okay I'll say something, I mean it's a little inappropriate, but would you like to meet with the Human Rights Commissary when he arrives... the first week of July," Mehmet Osman said "of course I'd be happy to... We're making preparations for a request for the embargo of gas exports to Turkey unless the State doesn't change the methods for using gas.

This is taken, somehow, as indicative of support for violent means but there is no analysis or evaluation on the fact that this may be legitimate and lawful civil rights advocacy in connection with human rights groups to limit the use of CS gas. Consistent with the slightly fevered approach of the authors of the indictment, the contrary is assumed, without any supporting evidence.

In a similar vein, a passage refers to a video produced about the Gezi Park protests in conjunction with a film festival but without, for some reason, any date attached. This is presented as evidence of criminal intent rather than a legitimate exercise of making a documentary as part of the ordinary rights of freedom of expression, and despite seemingly taking place after the protests:

Çiğdem Mater UTKU, a person working at Anadolu Kültür A.Ş. connected with the Open Society Foundation, which was under the direction of suspect Mehmet Osman KAVALA. In the phone call with ID: 2223204847 and ID: 2223229208, she states that they have talked to Rada SEZİÇ (film producer) from Sarajevo with Mehmet Osman KAVALA about a 15 minute film called VIDEO İŞGAL (VIDEO OCCUPY) concerning the filming of Gezi events and documentaries; that this conversation took place at the Erivan film festival; that these types of work by the Open Society Foundation were funded through Anadolu Kültür A.Ş.; that the 15 minute film about GEZI called VIDEO OCCUPY was taken and shown accompanied by Osman KAVALA.

It is plain that this very lengthy indictment does not engage with any evidence that runs contrary to its central political thesis. Most significantly, it refuses to engage with the evidence that none of the defendants are ever recorded to have called for or expressed support for violence. Neither does it engage with the preponderance of evidence where defendants expressly support (in public or private conversation) non-violent means.

Other instances in the indictment reveal a sheer lack of fairness and objectivity. As reported on above, one of the plaintiffs was a police officer who was convicted of the unlawful killing of a protestor. This is entirely covered up in a passage (87/640) concerning the killing of the student.

July 10 2013: An individual named Ali İsmail Korkmaz, a student of the Eskişehir Anadolu Lisesi, ran to a back road with a group of demonstrators to escape the response by the police with water cannon and pepper spray on June 2, 2013 where he was attacked by 5-6 people in civilian clothes. After being treated in Mavi Hastanesi, he was sent to Yunus Emre Devlet Hastanesi. Here he was sent home after a tomography was taken. After collapsing at home, Korkmaz was taken to Eskişehir Devlet Hastanesi where it was determined that he had bleeding in his brain. Korkmaz was kept in the intensive care ward hooked up to a ventilator. Korkmaz died around noon on July 10, 2013.

Overall, there is a total lack of balance and fairness in the indictment. Again, there are two possibilities; either the authors of the indictment were so carried away with the grand political thesis that they were unable to objectively assess their own evidence and/or it was not an indictment drafted in good faith.

Certainly, the ECtHR ruled that the evidence in the indictment could not, in good faith, provide a reasonable suspicion of an offence:

However, there is nothing in the case file to indicate that the prosecuting authorities had objective information in their possession enabling them to suspect, in good faith, the applicant at the time of the Gezi events.

Resolving these two possibilities goes outside of the scope of this report, but suffice it to say that the complete lack of balance in the indictment is such that it hardly resembles a legal document at all. Indeed, given the consequences of filing an indictment such as this, it represents a profound abuse of state prosecutorial power.

Evaluation of the indictment in terms of international standards

In addition to failing to comply with the Turkish Code for indictments, the indictment is also profoundly at odds with rights enshrined within the ECHR and the International Covenant on Civil and Political Rights ("ICCPR") to which Turkey is a signatory. What follows is necessarily only a summary of the international law principles which apply. More detailed exposition of these principles can be found set out in, for example, other BHRC reports which consider many of the same failings within the context of trials observed by BHRC.¹⁶

Right to a fair trial

The right to a fair trial is protected in both Articles 5 and 6 of the ECHR and Articles 9 and 14 of the International Covenant of Civil and Political Rights ("ICCPR") to which both Turkey is a signatory.¹⁷

A fundamental component of the right to a fair trial is the right of a Defendant to know the case against him/her and to challenge it. International human rights law is clear that if a defendant does not know the nature of the case against him/her, he/she is unlikely to be able to properly instruct his/her lawyer, obtain relevant evidence to support his/her defence or properly prepare for his/her defence.¹⁸ He/She is, therefore, highly unlikely to be able to have a fair trial. He/She is also unable to challenge his/her detention.¹⁹

General Comment 32 of the United Nations Human Rights Committee, dated 23 August 2017 (CCPR/C/GC/32) provides clearly at paragraph 31 that this right includes being provided with "both the law and the alleged general facts on which the charge is based."

Furthermore, established case law of the ECtHR affirms that it is a fundamental aspect of a fair trial that proceedings be adversarial with equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party.²⁰

In this case the lack of clarity and coherence, and the failure of the indictment to disclose any real evidence unnecessary repetition and unexplained theory and comments in the indictment is such as to render it incapable of proper objective analysis or response; and accordingly is an indictment which, in every respect, violates articles 6 and 14 of the ECHR and ICCPR, respectively.

Likewise, the right to a fair trial protects the cardinal principle of the “presumption of innocence.” In this case, a considerable amount of material in the indictment describes activity which is on the face of it lawful activity (making trips

abroad, meeting with individuals from both Turkey and abroad, private telephone communications, work within ordinary lawful civil society groups etc.) but which in the indictment is presumed, without any or any concrete evidence to the contrary, to be criminal activity.

Of course trips abroad, etc., can be in pursuit of criminal ends but this needs to be clearly indicated by concrete evidence, which is wholly lacking in this indictment.

As such, the whole premise of the Indictment runs contrary to the presumption of innocence enshrined within the right to fair trial in Articles 6 and 14 as above. It further fails to meet the minimum guarantees within those provisions as to the information to which a Defendant is entitled in responding to a criminal charge against him/her to such an extent that a fair trial on this indictment is simply impossible.

Freedom of expression and association

Of further concern in the context of this indictment is that it appears to fundamentally undermine the rights of freedom of expression and freedom of association as enshrined in Articles 10 and 11 of the ECHR and as enshrined in 19 and 21 of the ICCPR. The indictment fails to consider, balance or evaluate any of these rights in the context of the evidence and allegations.

Nearly all, if not all, of the activity of the defendants as described in the indictment was *prima facie* lawful activity protected by these rights (performing a play, producing a documentary video, human rights activism, commenting on government policy, meeting with parliamentarians from the European parliament, going on trips abroad, working in and running open society groups, etc.). In most instances where such activity is detailed in the indictment, it is done without reference to any concrete evidence that such activity was in pursuit of criminal purposes.

On the contrary, in the indictment, the exercise by these defendants in these basic rights was wholly criminalised and presumed to be criminal. Within such a framework, all opposition to the development of the park, the handling by the Gezi Park protests by the authorities and all criticism of the government is cast as part of some overall plot to overtake Turkey by force. The total lack of appreciation or evaluation of the rights under Article 10 and 11 ECHR and 19 and 21 ICCPR respectively is a further indication that this indictment falls far below proper and ordinary prosecutorial standards. It is an indictment drafted in profound contradiction to fundamental standards of international human rights to which Turkey has agreed to be bound.

As the ECtHR noted in its ruling²¹:

However, the facts imputed to the applicant, which were used as the basis for the questions put to him in the interview and with which he was subsequently charged by the prosecutor’s office, are either legal activities, isolated acts which, at first sight, are unrelated to each other, or activities which were clearly related to the exercise of a Convention right. In any event, they were non-violent activities.

On the same point, the ECtHR further noted²²:

It further notes that the measures were essentially based not only on facts that cannot be reasonably considered as behaviour criminalised under domestic law, but also on facts which were largely related to the exercise of Convention rights. The very fact that such acts were included in the bill of indictment as the constituent elements of an offence in itself diminishes the reasonableness of the suspicions in question.

Indeed, the ECtHR noted that the inclusion of activity in exercise of ECHR rights undermined its legitimacy²³:

As to the relations between the applicant and the NGOs referred to in the bill of indictment, the Court notes that none of the parties dispute that the NGOs in question are lawful organisations which continue

to conduct their activities freely.

With regard to the individuals with whom the applicant was in contact or with whom he had telephone conversations, and who were charged with various offences, the mere existence of contacts between the applicant and those individuals can hardly be used to justify inferences as to the nature of their relations. In addition, it must not be overlooked that, in the absence of a criminal conviction, those individuals, described in the prosecution documents as members of a criminal association which had conspired against the Government, enjoy the presumption of innocence under Article 6 § 2 of the Convention.

In any event, the Court finds no sign in the conversations in question of any indication that the applicant, in collaborating with those individuals, was seeking to transform peaceful demonstrations into a widespread and violent anti-Government insurrection.

Arbitrary detention

A pressing concern with this indictment is an obvious but crucial one: it is the basis upon which those charged have been detained pending trial and upon conviction.

The right to liberty and protection from arbitrary detention, including excessive pre-trial detention is protected in both article 5 of the ECHR and article 9 of the ICCPR. These rights also provide for the need for sufficient and clear reasons to justify detention and for any detention to be for a proper and lawful purpose.

In the absence of such clear, easily-identified reasons, and in the face of concerns about improper motives in this case, including as concluded by the ECtHR, it is clear that the detention of the defendants in this case on the basis of the current indictment is arbitrary, unlawful and contrary to Turkey's obligations under both article 5 (3) of the ECHR and article 9 ICCPR.

This is all the more pressing in light of the continued detention of Mr. Kavala and others and BHRC joins calls for the immediate release of the defendants in this case.

The effectiveness, impartiality and fairness of prosecutors in criminal proceedings

Finally, reference should be made to the UN Guidelines on the Role of Prosecutors ("Guidelines") which outline the role of prosecutors in upholding the rule of law. Principle 12 requires prosecutors to perform their duties "fairly, consistently and expeditiously" in a way that upholds human rights and protects human dignity. Principle 13(a) requires prosecutors to carry out their functions impartially and without discrimination, and 13(b) requires prosecutors to "protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect". The Guidelines are complemented and expanded on by the International Association of Prosecutors Standards of Professional Responsibility and Statement on the Essential Duties and Rights of Prosecutors. The Guidelines add specificity to fundamental principles of international human rights law including the right to equality before the law, the presumption of innocence, and the right to a fair and public hearing before an independent and impartial tribunal.

As outlined above at paragraph 80, there is a profound lack of balance that runs through the indictment such that the indictment as a whole can only be said to constitute a profound breach of international prosecutorial standards.

Other issues concerning the indictment

As commented above, the indictment is excessive in length. There must also be a concern as to whether the length and level of detail in an indictment such as this may be used as justification for the length of time given to draft it, particularly when suspects are being held in detention. If there is cogent evidence, presenting it in an indictment should not be a matter of constructing a grand elaborate thesis; it should be clear, straightforward, concise and, therefore, capable of being drafted within a reasonable period of time.

PART D: CONCLUSIONS AND RECOMMENDATIONS

The Gezi Park indictment marks a low watershed in the drafting of indictments in complex and sensitive cases. Not only do badly constructed and unbalanced indictments bring about legally poor and unsustainable conclusions, they can also do immense damage to the public prosecutor's office of the country which drafts them.

Politically sensitive investigations demand a balanced evaluation by prosecutors. In this particular indictment, ideological fervor has clearly overtaken sound prosecutorial judgement and analysis of evidence. Here, the indictment lacks all balance and has, within a highly politicised perspective, substituted ideology for evidence. The result is a shoddy and embarrassing document which fails to comply with fundamental standards of international human rights law to which Turkey is bound.

Steps should and must be taken to avoid its repetition. In particular:

1. There should be rigorous oversight of such indictments by those within the public prosecutor's office to ensure that a prosecutor does not get
2. 'carried away' and end up drafting an indictment in line with any official or
3. personal ideology but with scant adherence to the law or objective assessment of the evidence. This is a question of proper management. It is impossible to think that this indictment was properly or sufficiently managed and checked by a competent officer of the law;
4. Such indictments should also consider and, if the evidence justifies it, carefully rebut the evidence that may be favourable to the defendants. If the points favourable to the defendants cannot be rebutted by cogent evidence, the case should not be brought;
5. Such indictments must take account of fundamental standards of international human rights law, and the standard to which Turkey is bound as a member of the Council of Europe. If there are good reasons why the presumptions of innocence should not apply to ostensibly lawful activity, this should be spelt out by reference to clear and cogent evidence rebutting it. Likewise, the indictment must be clearly drafted and based on proper lawful purpose and with a clear evidential basis. If it cannot be, the indictment should not be brought.

The Gezi Park indictment is, regrettably, a textbook example, as to how not to draft indictments in complex cases.

Endnotes

- 1 Kavala v Turkey (ECtHR 429 (2019)).
- 2 https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?objectId=09000016809f7230
- 3 https://www.barhumanrights.org.uk/wp-content/uploads/2020/05/BHRC-Trial-Observation-Report_Osman-Kavala_May-2020_forweb.pdf
- 4 See Kavala v Turkey (ECHR 429 (2019) at paragraphs 15-16.
- 5 An unofficial translation of this appears here: https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/ppp_testdumb/documents/040926TurkeyCriminalCode.pdf
- 6 Turkey v Kavala (ECHR 429 (2019) paragraphs 47-48.
- 7 See Turkey v Kavala (ECHR 429 (2019) paragraphs 49-56 for an excellent and detailed summary of the indictment and observations in respect of it.
- 8 Turkey v Kavala (ECHR 429 (2019) paragraph 49.
- 9 Turkey v Kavala (ECHR 429 (2019) paragraph 50.
- 10 Turkey v Kavala (ECHR 429 (2019) paragraph 55
- 11 BHRC: The “Gezi Park trial forms part of a chilling clampdown on human rights defenders and civil society in Turkey, 17 July 2019, <https://www.barhumanrights.org.uk/bhrc-raises-concern-over-the-narrowing-of-an-increasingly-hostile-space-for-human-rights-defenders-in-turkey-following-observation-of-gezi-park-trial-calls-indictment-g/>
- 12 Turkey v Kavala (ECHR 429 (2019) at paragraph 153
- 13 See Paragraph 3 above for comments about the excessive number of complainants and the inclusion as complainant of a convicted killer of a protestor.
- 14 At section 2.1.4. regarding Mine Özerden’s links to the Open Society Foundation, at section 2.1.9.3 regarding information received which the indictment suggests indicates that the pharmaceutical firms Biofarma had supported the protests and at 3.1. concerning the identity of an individual shown on photographs.
- 15 Turkey v Kavala (ECHR 429 (2019) paragraph 227.
- 16 See BHRC, Trial Observation Interim Report, ZamanNewspaper: Journalists on trial, June 2018, available at <http://www.barhumanrights.org.uk/wp-content/uploads/2018/07/Zaman-TRIAL-OBSERVATION-INTERIM-REPORT-FINAL-1-1.pdf>
- 17 Turkey ratified the ECHR in 1954 and the ICCPR in 2003.
- 18 Mattoccia v Italy, App. no. 23969/94 (judgment 25th July 2000) (ECtHR), para 60.
- 19 Fox, Campbell and Hartley v UK, App. nos. 12244/86; 12245/86; 12383/86 (judgment 30th August 1990) (ECtHR); (1991) 13 EHRR, paragraph 40
- 20 Natunen v Finland, App. no. 21022/04 (judgment 31st March 2009) (ECtHR); (2009) 49 EHRR 810, paragraph 39, citing Rowe and Davis v UK, App. no. 28901/95 (judgment 16th February 2000) (ECtHR); (2000) 30 EHRR 1 and cases therein.
- 21 Turkey v Kavala (ECHR 429 (2019) paragraph 146
- 22 Turkey v Kavala (ECHR 429 (2019) paragraph 150
- 23 Turkey v Kavala (ECtHR 429 (2019) paragraph 157

Legal Report on Indictment
**Turkey v. Osman Kavala and Henri
Jak Barkey. 'The Espionage Case'**

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1: Executive summary

1. The indictment under examination, indictment no. 2020/7041, jointly charges Osman Kavala and Henri Jak Barkey with two offences, namely:
 - Article 328 of the Turkish Penal Code ('TPC'), namely Procuring State Information that Should Remain Confidential for Political or Military Espionage Purposes,
 - Article 309 TPC, namely Attempting to Change the Constitutional Order by Force, Threat and Arms.
2. It alleges that both were jointly involved in espionage, with Turkish businessperson and civil society activist Osman Kavala acting under the direction of American citizen and researcher Henri Jak Barkey to 'procure for political or military espionage purposes information that by its nature in view of the State's security or domestic and foreign political interests should remain confidential'. Further, it alleges that they jointly played a role in organizing and directing the attempted military coup in July 2016. The indictment was filed on 28 September 2020.
3. The Article 328 TPC offence:

Article 328

(1) A person who secures information that, due to its nature, must be kept confidential for reasons relating to the security or domestic or foreign political interests of the State, for the purpose of political or military espionage, shall be sentenced to a penalty of imprisonment for a term of fifteen to twenty years.
4. Article 309 TPC offence:

Article 309

(1) Any person who attempts to abolish, replace or prevent the implementation of, through force and violence, the constitutional order of the republic of Turkey, shall be sentenced to a penalty of aggravated life imprisonment.
5. This indictment follows an earlier indictment brought against Osman Kavala and 15 others in what became known as the 'Gezi Park' case, centering around the protests that took place in Turkey in 2013. In February 2020, Osman Kavala and other defendants were acquitted of all charges on that indictment, following trial. The indictment in the Gezi Park case has earlier been analysed as part of the Indictments Project. As set out in this report, there is a problematic factual nexus between the two indictments as essentially the same facts are relied upon to support the allegations in both indictments.
6. There are a number of serious problems with this indictment, chiefly:
 1. It does not present evidence such as to give rise to a reasonable suspicion of the offences

alleged. As such, the indictment violates the requirement for 'reasonable suspicion' under Article 170(2) Turkish Criminal Procedure Code ('TCCP').

2. Like its predecessor regarding the Gezi Park protests, this indictment is written in predominantly ideological rather than legal terms. This renders it problematic for the court to assess, and for defence counsel to challenge, what appear to be essentially political accusations.
3. Rather than setting out cogent evidence to connect the defendants to the offences alleged, the indictment presents an all-encompassing political theory that seeks to connect all major political dissent within Turkey as part of an, almost mystical, single conspiracy against the state. Through such a prism, all protest or involvement in civil society activism is viewed as 'evidence' in support of this overarching plot. Such a perspective has replaced the need to provide a coherent analysis and presentation of evidence to support charges.
4. In particular, although the indictment presents evidence that Henri Jak Barkey has visited Turkey on a number of occasions and, taken at its highest, may have met or been in proximity to Osman Kavala on a few occasions over a number of years, it does not set out any evidence of them doing anything together, or separately, that would be in furtherance of a crime, let alone the serious offences of espionage and seeking to overthrow the state by force.
5. This lack of a coherent connection between the offences alleged and the evidence presented in the indictment is in breach of Article 170(4) TCCP, which provides that 'The events that comprise the charged crime shall be explained in the indictment in accordance to their relationship to the present evidence.' Consequently, it likewise violates Article 6(3) ECHR and/or Article 14 of the International Covenant on Civil and Political Rights (ICCPR) right for a defendant to know the nature and cause of the charges brought against them.
6. Further, the indictment proceeds without any acknowledgement of the verdicts in the Gezi Park case. Notwithstanding that Osman Kavala and others were acquitted at trial of the accusation that they organised the Gezi Park protests in 2013 as part of an attempt to overthrow the state through force, this new indictment recites the same accusations and uses these as the basis of the charges against Osman Kavala, but without reference to the acquittals. The silence regarding these acquittals is a glaring omission.
7. Further, because the new indictment relies upon essentially the same evidence as presented in the Gezi Park trial so far as Osman Kavala is concerned, it raises the issue as to whether the new indictment represents a breach of Article 4 of the 7th Protocol of ECHR as representing further trial on matters that a defendant has already been acquitted of. Article 4, to which Turkey is a signatory, sets out: "...a person may not be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he/she has already been finally acquitted or convicted." Not only has Osman Kavala been acquitted in relation to the Gezi Park protests but, when considering that earlier case, the ECtHR evaluated the evidence as to whether Osman Kavala had conspired with Henri Jak Barkey and found that it was insufficient to provide reasonable suspicion of any offence.
8. The lack of reference in the indictment to the Gezi Park trial acquittals is one of a number of aspects where the indictment does not adequately set out material in the defendants' favour, in breach of the requirement for balance under Article 170(5) of the TCCP. The indictment signally fails to consider or take into account the aspects of the case which may be considered as objectively running contrary to the allegations.
9. The paucity of evidence presented, taken together with the political context of the filing of the indictment (Osman Kavala's continued detention is contrary to a decision for his immediate release by the European Court of Human Rights ('ECtHR') in December 2019, together with repeated public pronouncements against him by Turkey's President Erdoğan) give rise to a strong inference that these new proceedings have been brought not for legitimate law enforcement purposes but are, rather, designed to perpetuate his detention and serve as continued deterrence on the activities of rights and civil society activists. Consequently, the indictment is likely to represent further violation of Article 18 of the European Convention on Human Rights ('ECHR').

2: Evaluation of the indictment under Turkish law

7. Article 170 of the Turkish Criminal Procedure Code sets out an indictment's legal requirements:

Article 170-

- (1) The duty to file a public prosecution rests with the public prosecutor.
- (2) In cases where, at the end of the investigation phase, collected evidence constitutes sufficient suspicion that a crime has been committed, then the public prosecutor shall prepare an indictment.
- (3) The indictment, addressed to the court that has subject matter jurisdiction and venue, shall contain:
 - a) The identity of the suspect,
 - b) His defence counsel,
 - c) Identity of the murdered person, victim or the injured party,
 - d) The representative or legal representative of the victim or the injured party,
 - e) In cases, where there is no danger of disclosure, the identity of the informant,
 - f) The identity of the claimant,
 - g) The date that the claim had been put forward,
 - h) The crime charged and the related Articles of applicable Criminal Code,
 - i) Place, date and the time period of the charged crime,
 - j) Evidence of the offence,
 - k) Explanation of whether the suspect is in detention or not, and if he/she is arrested with a warrant, the date he/she was taken into custody and the date of his/her arrest with a warrant, and their duration.
- (4) The events that comprise the charged crime shall be explained in the indictment in accordance to their relationship to the present evidence.
- (5) The conclusion section of the indictment shall include not only the issues that are unfavourable to the suspect, but also issues in his/her favour.
- (6) At the conclusion section of the indictment, the following issues shall be clearly stated: which punishment and measure of security as foreseen by the related Law is being requested to be inflicted at the end of the adjudication; in cases where the crime has been committed within the activities of a legal entity, the measure of security to be imposed upon that legal entity.

8. Prima facie, the indictment conforms with the requirements under Article 170(3) in respect of a number of the formalities (a, b, d and h) in that it clearly sets out the identity of the suspects, details who the defence lawyers for Osman Kavala are and indicates the remand status of the defendants, indicating when they were arrested and/or detained. As Henri Jak Barkey has not been detained and does not reside in Turkey, any proceedings against him, therefore, would be brought in absentia.

9. This report focusses on what might be termed the substantive requirements of an indictment; whether the evidence collected constitutes sufficient suspicion that a crime has been committed (170(2)), whether the events that comprise the charged crime are properly explained in the indictment in accordance to their relationship to the present evidence (170(4)) and whether there is balance under 170(5).

Article 170(2) – Does the evidence presented provide reasonable suspicion that a crime has been committed?

10. The indictment and the evidence presented in it has not yet been tested in a court of law. Likewise, unlike the earlier Gezi Park indictment, there has not yet been a full evaluation of the new indictment by ECtHR. Therefore, considerable caution should be exercised before making an assessment of the indictment in the context of Article 170(2). Nonetheless, there are strong indicators of a lack of reasonable suspicion of the offences, given that:
- Although the indictment alleges joint offences in which both defendants colluded to overthrow the state and share state secrets, there is little clear evidence of them ever meeting, other than one public dinner event in 2016, to which others were invited;
 - The indictment presents no evidence of the defendants talking or communicating to each other about any of the events in question in the indictment or at any times considered significant in the indictment. The indictment acknowledges that there is little evidence of ‘direct contact’ between the defendants;
 - The indictment does not explain in any meaningful way what espionage activities either defendant was involved in;
 - The indictment is silent on what sensitive/secret information was either obtained or passed on by either defendant;
 - No secret state information was found on either defendant. Any information on Osman Kavala’s phones or other devices appears *prima facie* to be information already within the public domain.
 - The indictment does not set out how either defendant actually sought to organise or progress the attempted coup in 2016. Indeed, it is entirely silent on what either did to actually advance the coup;
 - The indictment presents no evidence that either defendant spoke in support of the coup attempt, either before, during or after. Indeed, the only pronouncements by either highlighted in the indictment are Henri Jak Berkey’s comments on the night of the attempted coup, to the effect that it was a bad thing;
 - It presents no evidence of either defendant at any point expressing views in support of violent means or the coup attempt. Not that to do so would in itself be evidence of any crime but, in the context of an indictment alleging from circumstantial evidence that both sought to support an attempted coup, the lack of either saying anything in support of it must be significant;
 - It presents no evidence that either were involved in any activity other than that in exercise of lawful and protected rights of freedom of association as a civil society activist and researcher;
 - In place of any such evidence, as is set out below, the indictment instead presents a series of pseudo-political theses to seek to portray both as masking under ‘guises’ of legality in order to (in an unspecified way) cause harm to Turkish society and prepare the groundwork for the coup attempt;
 - Rather than presenting concrete evidence, the indictment narrates a chronology in which the movements of each are claimed, without explanation or obvious logic, to be part of a coordinated movement.
11. The preliminary assessment that the indictment does not meet the reasonable suspicion test under 170(2) is bolstered by the ECtHR’s earlier assessment of Osman Kavala’s detention regarding the Gezi Park trial. To consider this aspect, it is necessary to analyse the new indictment in the context of ECtHR’s ruling in *Kavala v. Turkey* (Application no. 28749/18). In the course of ECtHR considering Osman Kavala’s claim that his detention was arbitrary and

that the proceedings had been pursued for the ulterior purpose of silencing human rights and civil society activists, ECtHR noted that Osman Kavala had been detained in relation to two accusations:

1. Related to the Gezi Park events which occurred between May and September 2013 (Article 312 of the Criminal Code)
 2. Relating to the attempted coup of 15 July 2016 (Article 309 of the Criminal Code, the same article as in the new indictment).¹
12. ECtHR considered in detail the facts giving rise to detention under Article 309² including the same evidence repeated in the new indictment from phone base receiver sections that Osman Kavala's and Henri Jak Barkey's phones emitted signals from the same base station on 18 July 2016, that is two days after the attempted coup. ECtHR noted that Osman Kavala had submitted regarding such evidence that this phone station covered a large central district in which many hotels and his office were located.³
13. ECtHR then assessed whether the evidence presented gave rise to reasonable suspicion of offences under Article 312 (the Gezi Park protests) and Article 309 (the attempted coup)⁴. Having assessed that there were no reasonable grounds for suspicion in regard to the Gezi Park protests, the ECtHR likewise determined that there was no reasonable suspicion of involvement in the attempted coup. The court stated as follows:

iv) Reasonableness of the suspicions in respect of the attempted coup

154. With regard to the accusations concerning the attempted coup of

15 July 2016, the Court observes that these were predominantly based on the existence of "intensive contacts" between the applicant and H.J.B., who, according to the Government, was the subject of a criminal investigation for participation in organising an attempted coup.

In the Court's view, however, the evidence in the case file is insufficient to justify this suspicion. The prosecutor's office relied on the fact that the applicant maintained relationships with foreign nationals and that his mobile telephone and that of H.J.B. had emitted signals from the same base receiver station. It also appears from the case file that the applicant and H.J.B. met in a restaurant on 18 July 2016, that is, after the attempted coup, and that they greeted each other briefly. In the Court's opinion, it cannot be established on the basis of the file that the applicant and the individual in question had intensive contacts. Further, in the absence of other relevant and sufficient circumstances, the mere fact that the applicant had had contacts with a suspected person or with foreign nationals cannot be considered as sufficient evidence to satisfy an objective observer that he could have been involved in an attempt to overthrow the constitutional order.

155. In the Court's opinion, it is quite clear that a suspicion of attempting to overthrow the constitutional order by force and violence must be supported by tangible and verifiable facts or evidence, given the nature of the offence in question. However, it does not appear from the decisions of the domestic courts which ordered the applicant's initial and continued detention, or from the bill of indictment, that the applicant's deprivation of liberty was based on a reasonable suspicion that he had committed the offences with which he was charged."

14. It is important to note that the new indictment essentially seeks to conjoin the accusations in the Gezi Park protests, for which ECtHR found there was no reasonable suspicion of an offence, together with the accusation of involvement in the attempted coup, for which ECtHR also found there was no reasonable suspicion of an offence. The result of the synthesis of two accusations already determined to be without reasonable foundation must, likewise, be highly likely to be without foundation. Given this previous determination by ECtHR on the offence under Article 309, there must be a strong inference that the new offence of espionage under Article 328 has been brought for the purpose of creating a 'new' charge that can be argued to be not already within the ambit of ECtHR's decision that Osman Kavala be 'released immediately'⁵ for the offences under Article 309 and 312.

15. The lack of evidence that would, objectively, give rise to a reasonable suspicion of an offence is both contrary to Article 170(2) TCPC. Further, the paucity of evidence supports other factors indicating that the prosecution is brought for 'ulterior' rather than legitimate law enforcement purposes and, therefore, contrary to Article 18 ECHR. It cannot be overlooked that this indictment is a successor to the Gezi Park indictment, about which the ECtHR ruled in December 2019 to have been brought without reasonable suspicion of any offence and for ulterior motives in violation of Article 18.
16. Given that the filing of this indictment has had the effect of perpetuating Osman Kavala's detention, contrary to a ruling of ECtHR for his immediate release in December 2019, the ostensible lack of evidence of any offence provides further indication that the new indictment is brought for ulterior political purposes and is, in its way, an aggravated form of violation of Article 18; an indictment brought for the purposes of outrunning the ECtHR's condemnation of an earlier indictment for violation of Article 18. Indeed, the filing of the indictment on 28 September 2020 was one day before the Turkish Constitutional Court was due to rule on the lawfulness of Osman Kavala's continued detention and had the effect that the Constitutional Court postponed its determination. At the time of writing, Osman Kavala remains in detention.

Article 170(4) – Does the indictment properly explain the crime alleged and the evidence establishing the offence?

17. In this respect, the indictment is defective. The principal areas of concern are that the strong ideological slant of the indictment goes hand in hand with a lack of a coherent causal connection of evidence to charges in such a way as to make the charges unintelligible. Consequently, it would be difficult or impossible for a court of law to fairly assess and for the defence to properly challenge the indictment. This indicates not only a breach of this requirement of TCPC but also that the defendants' rights to a fair trial under Article 6 ECHR are being breached.

The ideological nature of the indictment

18. The indictment presents a grand political theory which appears to have replaced objective, forensic and legal analysis of the evidence.
19. In cases such as this, it is important to forensically examine investigation material and present it in a clear way, free of political ideology and animus. As ECtHR said concerning an offence under Article 309, "it is quite clear that a suspicion of attempting to overthrow the constitutional order by force and violence must be supported by tangible and verifiable facts or evidence, given the nature of the offence in question." For instance, if evidence supports charges such as espionage under Article 328, it should be possible to present this in a tangible way. For instance, where Suspect A is seen to meet with Suspect B, and then to hand over a memory card containing sensitive secret information, a case of espionage can be understood.
20. In this indictment, however, we have the opposite; conspiracy theory appears to have substituted itself for evidence. This report considers only a few examples of the very many instances where ideology has supplanted the need for evidence.
21. The following passage from the introductory section of the indictment (page 3/71) sets the ideological tone:

“As has been stated on numerous occasions, it is a known fact that the Gezi Park Uprising incident was an event which took place in the very wake of the processes whereby FETÖ/PDY had striven for about forty years to take over all areas of the state of the Republic of Turkey alongside the important ones such as the social, economic, judicial, military and civil areas, and had infiltrated the tiniest units of the machinery of the state; by means of which it openly endeavored to weaken the legitimate government through the Ergenekon, Sledgehammer and 7 February National Intelligence Organization plot attempts in which it tried to usurp state rule with initial recourse to judicial procedures; and in which, following the ending in failure of the Gezi Uprising, it staged a judicial coup attempt comprising the creation of false evidence in the 17/25 December 2013 proceedings courtesy of its structure inside the judiciary; and, by way of continuation, it organized the National Intelligence Organization’s Trucks Plot with a view to creating the perception that terrorist organisations were being aided again to strain the circumstances of the legal and legitimate government in the international arena; and, upon the failure of all these plots, it engaged in a coup attempt with the aim of taking hold of and changing the constitutional order on 15 July 2016 by placing trust in the force it had created in all units of the machinery of state and particularly the structures inside the police and military.”

22. Thus, in one long sentence, the indictment presents not just the Gezi Park protests but all of the upheavals and protests of recent years as different aspects of one alleged heterogeneous yet homogenous conspiracy. Within such an all-encompassing ideological perspective, any support for protests and/or criticism of the ruling government at any point over the last seven years can be viewed as evidence of encouragement or support of the plot.

23. The indictment repeats, without evidence, essentially the same theories about George Soros organizing and directing dissent within Turkey that formed the basis of the earlier Gezi Park indictment; the following passage is one of many similar (3/71):

“It has been determined that the suspect Mehmet Osman KAVALA has connections with George Soros, director of the Open Society Foundation which organised and financed the supposedly freedom-themed events popularly known globally as the Arab Spring that started in 2013 and earlier; the Open Society Foundation targets regime change in countries by pursuing segregation and social division through accentuating differences in social and demographic structures in the Republic of Turkey state just as in Arab countries; the suspect Mehmet Osman KAVALA, by conducting research into the cultural and social situation of our country’s people through both Anadolu Kültür S.A. and the other CSOs, companies and entities of which he is the founder and director, has both obtained detailed and important information and engaged in segregationist activities...and the actual aim of the activities consisting of the actions and processes he engages in with talk of developing so called democratic freedoms and spreading them to the grassroots of society is to incapacitate the legitimate democratic government, incite segregation within society and cause harm by weakening the unity and togetherness of our citizens with the state and nation to the detriment of national interests and the benefit of foreign states and intelligence organisations.”

24. Within such a profoundly ideological framework, the work of civil society activists such as Osman Kavala in encouraging democratic freedoms and human rights is presented as a means of inciting segregation within society. The theme that civil society groups are actively seeking to weaken the unity of Turkish society, segregationism, runs unchecked throughout this indictment and is the opposite of an objective legal presentation of evidence. Osman Kavala’s work in providing funding for documentary projects such as a film on citizens of Kurdish and Armenian origin are, therefore, presented as aimed at dividing different groups within society in order to weaken it in preparation for armed insurrection.

25. Further, the reference above to Osman Kavala obtaining “detailed and important information” appears to portray obtaining ordinary information in the course of civil society work as part of his alleged espionage. It is difficult to see how a court of law can evaluate such theses nor how lawyers for the defence would be able to challenge them. Moreover, these passages beg the question who this indictment is being written for? There must, indeed, be a suspicion here that it is drafted for a political readership rather than for the parties in the proceedings.

26. Moreover, such passages have an effect on the fairness of any subsequent proceedings. When the political ideology of a ruling party runs unchecked through an indictment, for any lawyer or judge to challenge or deny such a thesis is capable of being viewed as tantamount to a repudiation of the ruling party. Of course, that is not to say that lawyers are not able to make submissions about the paucity of tangible evidence or that judges cannot consider them, but such a strong political slant makes objective impartial assessment of the evidence more difficult. Such a concern is by no means hypothetical; following the acquittals in the Gezi Park trial in February 2020, the trial judges were placed under investigation by the Association of Judges and Prosecutors and the verdicts of acquittal were described as ‘maneuvers’ by Turkey’s President Erdoğan.
27. At a more basic level, a considerable amount of the material presented in the indictment is incapable of legal assessment; how is a court supposed to assess or rule on an accusation that promoting the rights of different groups within society has the effect of creating division within society and a feeling of otherness within it?

Lack of clarity and coherence

28. Commensurate with the predominantly political tone of the indictment, is a lack of clarity and coherence.
29. In particular, there are a number of rambling and unexplained comments. The following passage from the introductory section concerning the 2013 Gezi uprising (page 9/71) is typical:

“The uprising was coordinated on behalf of the Open Society Foundation by the foundation’s founding member, the suspect Mehmet Osman Kavala; that Mehmet Osman Kavala exerted great influence particularly over Taksim Platform, Taksim Solidarity and the Forum Coordination, which was rolled out widely in the advanced stages of the uprising, and, even if he did not officially have membership in these, the decisions taken were not taken without consulting the suspect Mehmet Osman Kavala; that all international endeavors relating to the Gezi Uprising were set up through the suspect Mehmet Osman Kavala; that the suspect Mehmet Osman Kavala was informed of the needs of the activists participating in the Gezi Uprising, and these were met and that work involving the use of all manner of visual broadcasting methods such as documentaries, films and exhibitions with a view to increasing interest in the uprising both in Turkey and abroad and putting pressure on the State of the Republic of Turkey and the setting up of new media structures took place under the suspect Mehmet Osman Kavala’s organisation.”

30. Prima facie lawful activity such as attending film festivals and meeting with members of human rights organisations is, therefore, said to be in furtherance of armed insurrection, but without explanation as to how. In the same way, participation in a photographic exhibition at the European Parliament is presented as being part of preparing the way for the attempted coup.
31. The indictment also presents evidence of the travel of the two defendants, but without ever setting out the significance of the travel in the context of the charges alleged. For instance, at 41/70, the indictment states:

When the records for entry from abroad and exit for the suspect Mehmet Osman Kavala were examined, it was identified that the suspect went abroad more frequently prior to the 15 July attempted coup than in previous years.

32. How such travel is related to the crimes alleged is simply not explained. Likewise, dates when the defendants did not travel together or meet is presented, without explanation, as evidence that they jointly prepared an attempt to overthrow the state. Consider, for instance the following (37/71):

It was established that the suspect Henri J. Barkey was in Istanbul from 26-29 June; on 30 June 2016, he went to Diyarbakır province, and had various meetings in the Yenişehir, Bağlar, Sur and Kayapınar districts, returning to Istanbul on the evening of the same day, and remained in Istanbul province until 3 July 2016.

It was identified that the suspect Mehmet Osman Kavala meanwhile, on 27 June 2016, one day after the arrival of the suspect Henri Jak Barkey in Istanbul, went to Diyarbakır province, and after having various meetings there, returned the same day to Istanbul.

33. What either was doing in Diyarbakır province, at different times, or how it might have supported a coup attempt, is nowhere explained. A sequence of, ostensibly, unrelated travel is presented in the lead up to the following conclusion (37/71):

“Taking account of the chain of events elaborated on above, it has been ascertained that the activities prior to the 15 July coup attempt of the suspects Mehmet Osman Kavala and Henri Jak Barkey intersected with the coup attempt preparations; that both suspects had prior knowledge of the coup attempt and set up a host of connections domestically and abroad to create the infrastructure of the coup attempt”.

34. The evidence as to how either defendant had foreknowledge of the coup attempt is not presented. The indictment presents a series of meetings and seminars that Henri Jak Barkey attended, but without setting out how they are connected either to espionage or in support of the attempted coup.
35. The indictment, understandably, focusses on the events surrounding the attempted coup on 16 July 2016. It closely analyses Henri Jak Barkey’s movements at a conference event on Büyükada island near Istanbul at that time, but without setting out how participation at the conference or his activities at the time boosted, supported or helped organise the attempted coup. The evidence establishes that Henri Jak Barkey monitored the events on television and made international calls that night, but it must be highly likely that most people in Turkey at that time also monitored the dramatic and important events that were broadcast on a number of television channels.
36. How such activity was in furtherance of a crime, however, is not explained in the indictment, nor is evidence presented of anything said or done by him at that time, or previously, to organise or direct the attempt.
37. Following a lengthy section setting out the legal framework for a charge of espionage under Article 328 TPC, the indictment then sets out the case for the defendants with that charge. This sets out a thesis but does not set out any evidence to substantiate them. In the following passage, highlighted in bold are matters for which no evidence is presented:

“Considering the actions of the suspects in light of these explanations, it was determined that the suspects established parallel contacts with insider officers playing a covert role in the organisation that conducted and directed this attempt on behalf of the FETÖ/PDY armed terrorist organisation prior to the coup attempt, and thus made preparations for the coup attempt; that they were in contact and direct relations and that they took initiatives with the aim of coordination with the persons and groups who were likely to take on legal or illegal duties within the new administration to be formed after the coup attempt’s success; that in this context, they travelled extensively domestically and abroad; that they travelled and held meetings successively, including with the insider officers of the organisation; [and] that their contacts in the form explained, which took place with an unusual intensity, were within the scope of preparations for the coup attempt. It is also understood that one of the suspects, Henri Jak Barkey, came to our country the day the coup attempt was attempted; that in this context, he organised a meeting in order to hide his activity; as also explained in the previous sections of the indictment, that he postponed the date of this meeting with unreasonable excuses until the day of the coup attempt; [and] that on the day of the coup attempt, he directed the process by following the attempt from a relatively safe distance considering the attacks that could be experienced and were experienced due to the coup attempt in our province Adalar.

As also stated by those whose statements were taken as witnesses within the scope of the file, it was determined that Henri Jak Barkey, unlike the other delegates who stayed with him, closely followed the developments regarding the coup attempt during the night and made contacts, in a tense mood, that could be regarded as directing the process; [and] that in this context, foreign persons and institutions that were in contact with him shared the travel information of the President of the Republic of Turkey on social media. Within the scope of these activities, it is quite obvious that the suspects took active roles in the coordination and maintenance of the coup attempt attempted by members of the FETÖ/PDY armed terrorist organisation in favour of foreign states, followed the actions in situ, and intervened in the process with the coordination and contacts they established, when necessary.”

38. In terms of the offence of espionage under Article 328, the indictment states that the state secret information that the defendants procured was (page 61) “obtaining information that has sociological, economic and political content, which should be kept confidential in terms of the security of the state or foreign political benefits of the state.” The indictment, however, does not provide any explanation as to why working on the sociological, economic, political context of the country through work in civil society organisations in producing analysis can in any meaningful sense be collecting “confidential information.” Not only is this definition meaningless, but it would also prima facie criminalise the work of all such civil society and rights organisations. Indeed, finding out information about the society in which citizens live would become evidence of a crime. Such a definition is not only legally meaningless, it also presents a full-frontal attack on basic rights of association and expression.
39. It is noticeable that, notwithstanding the seriousness of the allegations, no serious attempt has been made in the indictment to link Osman Kavala to any activity or role in either espionage or the attempted coup. Consequently, given the lack of coherent evidence, it is hard to resist the conclusion that the indictment is a piece of political theatre rather than a legal instrument and one designed to perpetuate the detention of Osman Kavala.

Article 170(5) – Does the indictment properly balance evidence both favourable to and unfavourable to the defendants?

40. This Article requires the indictment to have balance and to weigh points both favourable and unfavourable to the suspects. This is no more than to reflect the general norms as set out in Principles 13(a) and 13(b) of the Basic Principles on the Role of Prosecutors and Article 3 of the Standards of the International Association of Prosecutors. Article 3 states that:

“Impartiality: Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- 3.1 carry out their functions impartially;

3.2 remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;

3.3 act with objectivity;

3.4 have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.”

41. Unfortunately, there is little sense of balance to be found in this indictment. Although the indictment does acknowledge that there was little ‘direct evidence’ of communication between the two defendants, there are a number of other basic aspects to the evidence that would require comment and evaluation in the indictment in order for there to be due balance, which are absent here. They include:
1. Neither of the defendants are presented as expressing any comments in favour of armed insurrection and/or support for any coup or overthrow of the state;
 2. Neither of the defendants are presented as taking any actions that, objectively viewed, aided or advanced an attempted military coup;
 3. No evidence of either defendant having contact with any of the organisers of the attempted coup;
 4. The lack of any evidence to suggest that either defendant was in possession of information that could be considered state sensitive espionage material;
 5. The lack of any acknowledgement that Osman Kavala and others were acquitted of the charges that they directed the Gezi Park protests. Likewise, the lack of causal connection between these protests in 2013 and the attempted coup in 2016.
 6. The activity of both defendants comes within the ambit of prima facie legal activity in exercise of rights of freedom of association and expression.
42. More generally, the indictment consistently presents the activities of the defendants in civic society within an extreme and hostile ideological perspective that is the very opposite of a fair objective balanced evaluation of the evidence such as is mandated by TPC.

3: Evaluation of the indictment in terms of international standards

43. In addition to failing to comply with TPC, the indictment is also at odds with rights enshrined within the ECHR and the International Covenant on Civil and Political Rights (“ICCPR”) to which Turkey is a signatory.

Right to a fair trial

44. The right to a fair trial is protected in both Articles 5 and 6 of the ECHR and Articles 9 and 14 of the International Covenant of Civil and Political Rights (“ICCPR”) to which both Turkey is a signatory.
45. A fundamental component of the right to a fair trial is the right of a defendant to know the case against him/her and to challenge it. International human rights law is clear that if a defendant does not know the nature of the case against him/her, he/she is unlikely to be able to properly instruct his/her lawyer, obtain relevant evidence to support his/her defence or properly prepare for his/her defence. He/She is therefore highly unlikely to be able to have a fair trial. He/She is also unable to challenge his/her detention.
46. General Comment 32 of the United Nations Human Rights Committee, dated 23 August 2017 (CCPR/C/GC/32) provides clearly at paragraph 31 that this right includes being provided with “both the law and the alleged general facts on which the charge is based.”
47. Furthermore, established case law of the ECtHR affirms that it is a fundamental aspect of a fair trial that proceedings be adversarial with equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations

filed and the evidence adduced by the other party.

48. In this case, the lack of clarity and coherence, and the failure of the indictment to disclose any real evidence, unnecessary repetition and unexplained theory and comments in the indictment is such as to render it incapable of proper objective analysis or response and accordingly is an indictment which, in every respect, violates articles 6 and 14 of the ECHR and ICCPR, respectively.
49. Likewise, the right to a fair trial protects the cardinal principle of the “presumption of innocence.” In this case, a considerable amount of material in the indictment describes activity which is on the face of it lawful activity (making trips abroad, meeting with individuals from both Turkey and abroad, private telephone communications, work within ordinary lawful civil society groups, etc.), but which in the indictment is presumed, without any or any concrete evidence to the contrary, to be criminal activity. Further, the indictment presents the collection of ordinary information about society through social activism work as collecting confidential espionage material.
50. As such, the whole premise of the Indictment runs contrary to the presumption of innocence enshrined within the right to a fair trial in Articles 6 and 14, as above. It further fails to meet the minimum guarantees within those provisions as to the information to which a defendant is entitled in responding to a criminal charge against him/her to such an extent that a fair trial on this indictment is impossible.

Freedom of expression and association

51. Of further concern in the context of this indictment is that it appears to fundamentally undermine the rights of freedom of expression and freedom of association as enshrined in Articles 10 and 11 of the ECHR, and as enshrined in 19 and 21 of the ICCPR. The indictment fails to consider, balance or evaluate any of these rights in the context of the evidence and allegations.
52. All of the activity of the defendants as described in the indictment was *prima facie* lawful activity protected by these rights (human rights activism, commenting on government policy, meeting with parliamentarians from the European parliament, going on trips abroad, working in and running open society groups, attending seminars and conferences, etc.). Where such activity is detailed in the indictment, it is done without reference to any concrete evidence that such activity was in pursuit of criminal purposes.
53. On the contrary, in the indictment, the exercise by these defendants in these basic rights was wholly criminalised and presumed to be criminal. Within such a framework, all criticism of the government is cast as being part of some overall plot to overtake Turkey by force. The total lack of appreciation or evaluation of the rights under Article 10 and 11 ECHR and 19 and 21 ICCPR, respectively, is a further indication that this indictment falls far below proper and ordinary prosecutorial standards. It is an indictment drafted in profound contradiction to fundamental standards of international human rights to which Turkey has agreed to be bound.

The effectiveness, impartiality and fairness of prosecutors in criminal proceedings

54. Finally, reference should be made to the UN Guidelines on the Role of Prosecutors (“Guidelines”) which outline the role of prosecutors in upholding the rule of law. Principle 12 require prosecutors to perform their duties “fairly, consistently and expeditiously” in a way that upholds human rights and protects human dignity. Principle 13(a) requires prosecutors to carry out their functions impartially and without discrimination, and 13(b) requires prosecutors to “protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect”. The Guidelines are complemented and expanded on by the International Association of Prosecutors Standards of Professional Responsibility and Statement on the Essential Duties and Rights of Prosecutors. The Guidelines add specificity to fundamental principles of international human rights law including the right to equality before the law, the presumption of innocence and the right to a fair and public hearing before an independent and impartial tribunal.
55. As outlined above, there is a profound lack of balance that runs through the indictment such

that the indictment as a whole can only be said to constitute a profound breach of international prosecutorial standards.

4: Conclusion

56. Politically sensitive investigations demand balanced evaluation by prosecutors. In this particular indictment, however, ideological fervor has clearly overtaken sound prosecutorial judgement and analysis of evidence. The indictment lacks due balance and has, within a highly politicised and hostile perspective, substituted ideology for evidence. The indictment is also in serious breach of domestic law and international human rights standards.
57. The indictment is so problematic that it is hard to meaningfully set out how it could be improved, particularly where there is a strong inference that it has been presented for ulterior motives, in violation of Article 18 ECHR. It is hugely concerning that Osman Kavala remains in detention on the basis of a flawed indictment that has replaced an equally flawed indictment. ECtHR's damning ruling on the earlier indictment has not resulted in an improved approach in this successor indictment.
58. The strong political slant of the indictment, its reversal of the presumption of innocence and lack of coherence strongly suggest a violation of the Article 6, right to a fair trial. Osman Kavala's acquittal from the Gezi Park trial gives rise to a concern that he is now being prosecuted for essentially the same matters that he has already been acquitted of, in breach of Article 4 of the 7th Protocol of ECHR. The indictment also seeks to criminalise ordinary civil society activism and human rights work in a way that is in violation of Articles 10 and 11 ECHR.
59. Indeed, the logical consequence of the indictment is that all work to enhance the rights of those within Turkey can be viewed as *prima facie* criminal and seeking information about Turkish society can be viewed as a means of gathering confidential material for the purposes of espionage. That just demonstrates how dangerous this indictment is and how far from reality and legal requisites it has strayed.

Endnotes

- 1 Kavala v. Turkey (Application no. 28749/18) at Paragraph 4.
- 2 Kavala v. Turkey (Application no. 28749/18) at Paragraphs 23-27, 38
- 3 Kavala v. Turkey (Application no. 28749/18) at Paragraphs 108
- 4 Kavala v. Turkey (Application no. 28749/18) at Paragraphs 139-155
- 5 Kavala v. Turkey (Application no. 28749/18) at Paragraphs 240.

A Summary of the Judgement of the European Court of Human Rights on the Kavala Application (10.12.2019)

ŞERİFE CEREN UYSAL

Following his arrest on 1 November 2017, Osman Kavala submitted an individual application to the Constitutional Court on 29 December 2017. The Constitutional Court announced its decision on 28 June 2019 and ruled that Kavala's detention did not violate Article 19 of the Constitution of the Republic of Turkey, which protects the right to personal liberty and security.

Application to the European Court of Human Rights

Following the Constitutional Court's decision, Kavala made an individual application to the European Court of Human Rights on 8 June 2018. In his application, Kavala argued that his right to liberty and security as set out in Articles 5/1 and 3 of the European Convention on Human Rights had been violated. Kavala stated that his detention was arbitrary and that there was no evidence that could be considered as a basis for reasonable suspicion that he had committed a criminal offence. He also stated that the right to a reasoned judgement was violated in that the decisions of the local courts regarding the continuation of his detention did not contain sufficient justification. Again invoking Article 5/4 of the ECHR, Mr Kavala emphasised that the requirement of expeditiousness, which should be essential in the Constitutional Court's review of the lawfulness of detention, was not fulfilled. Finally, referring to Article 18 of the ECHR (limitation of restrictions on rights), Kavala argued that his rights as defined under the ECHR were restricted for purposes other than those set out in the ECHR. In short, Mr Kavala emphasised that his detention was essentially intended to silence and punish him for being a civil society activist, for being critical of the government, and to paralyse the civil society sphere.

Proceeding before the ECtHR

This application and trial process, which is of historical significance in terms of its results - considering that the Council of Europe is also conducting an infringement procedure against Turkey - has created an important agenda for rights defenders around the world.

The Council of Europe Commissioner for Human Rights ("the Commissioner for Human Rights") exercised her right to intervene in the proceedings and submitted written comments (Article 36/3 of the Convention and Rule 44/2). In addition, written comments were submitted to the Court by the following non-governmental organisations: PEN International, Turkey Human Rights Litigation Support Project and the Association for Freedom of Expression ("the intervening non-governmental organisations"). The Section President granted leave to the organisations in question to intervene under Article 36/2 of the Convention and Rule 44/3.¹

The Government of Turkey raised preliminary objections to the application. Their main objection was that the application had also been lodged with the United Nations Working Group on Arbitrary Detention and that domestic remedies had not been exhausted.

The Court examined both objections in detail. It found that an application had been lodged against Mr Kavala with the UN Working Group on Arbitrary Detention, but that it had not been lodged by the applicant or a relative. And the Court rejected this objection, stating in its judgement that "it reiterates that, under its case-law, if the complainants before the two institutions are not identical (see *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006), the "application" to the Court cannot be

considered as being “substantially the same as a matter that has ... been submitted...”.² As regards the allegation of non-exhaustion of domestic remedies, the Court did not depart from its previous case-law and rejected this objection as well, referring to the Constitutional Court judgement on Mr Kavala in 2019.

Judgment

Following the rejection of the Government’s first objections, the ECtHR examined Mr Kavala’s allegations of violation, which formed the merits of the application.

In violation of Articles 5/1, 5/3 and 5/4 of the ECHR:

- In his assessment of the allegations that Mr Kavala’s rights under Articles 5/1 and 5/3 of the ECHR had been violated, the Court first explained the criteria on which it would rely. The Court then made the following striking observations:
- Although Kavala was accused of being the instigator and leader of the Gezi Park protests, he was not questioned about this during the police detention phase.
- There is no evidence in the file that the applicant used force or violence, encouraged, authorised or supported such acts.
- There is no concrete finding in the detention order and in the subsequent decisions on the continuation of detention that would create a reasonable suspicion sufficient to convince an objective observer that the applicant participated in or supported these actions.
- As regards the offence of overthrowing the Government by force and violence, the Court noted that the acts charged to the applicant “are either legal activities, isolated acts which, at first sight, are unrelated to each other, or activities which were clearly related to the exercise of a Convention right. In any event, they were non-violent activities.”³
- Regarding the witness statements in the file regarding Kavala’s meetings with foreign actors and the data obtained as a result of technical surveillance, the court made the following statements: “The Court does not see how this meeting, or those with the journalists or European delegations, could in themselves amount to a fact justifying the suspicions in question”.⁴
- It was pointed out that the civil society organisations referred to in the indictment were legal and continued to operate freely.
- It was noted that the applicant’s personal relations, which were the subject of the indictment, were a simple contact in the course of his work and could not be used to justify other conclusions.
- While allegations were made on the basis of Kavala’s relationship with certain individuals, the Court noted that there were no convictions against these individuals and that these individuals also benefited from the presumption of innocence and in any event the content of the mentioned conversations was peaceful.
- Following these findings, the following statements are clearly stated in the judgement: “In consequence, it [the Court] finds that the credibility of the prosecution’s arguments is considerably weakened”.⁵
- In addition, the Court; “the Court observes that the authorities are unable to demonstrate that the applicant’s initial and continued pre-trial detention were justified by reasonable suspicions based on an objective assessment of the acts in question”.⁶
- Equally, the Court “cannot overlook the fact that the applicant was arrested four years after the Gezi events and the opening of the criminal investigation in 2013. The Government has failed to submit any argument explaining this considerable lapse of time between the circumstances giving rise to the suspicions and the applicant’s placement in detention.”⁷

- Therefore, the Court “concludes that there has been a violation of Article 5 § 1 of the Convention in the present case on account of the lack of reasonable suspicion that the applicant had committed an offence.”⁸
- The Court also stated the following with regard to the Constitutional Court’s decision-making period: “The Court concludes that the proceedings by which the Turkish Constitutional Court ruled on the lawfulness of the applicant’s pre-trial detention cannot be considered compatible with the “speediness” requirement of Article 5 § 4.”⁹

In violation of Article 18 of the ECHR:

As it is known, the allegation of violation of Article 18 of the ECHR is a very important allegation and reaching such a conclusion requires a detailed examination. While examining this allegation, the ECtHR, once again, after underlining the previously summarised issues such as the presentation of legal activities as illegal and the absence of reasonable suspicion, made the following statements:

“In the Court’s opinion, the various points examined above, taken together with the speeches by the country’s highest-ranking official (quoted above), could corroborate the applicant’s argument that his initial and continued detention pursued an ulterior purpose, namely to reduce him to silence as a human-rights defender.”¹⁰

“The Court is also aware of the concerns expressed by the Commissioner for Human Rights and the third-party interveners, who consider that the applicant’s detention is part of a wider campaign of repression of human-rights defenders in Turkey.”¹¹

In this context, the ECtHR found a violation of Article 18 of the Convention in the context of Article 5/1-c of the Convention, but it did not stop there and did not ignore the deterrent purpose of Kavala’s detention for the whole human rights struggle in Turkey. The following statements are striking and unfortunately can be read as a summary of the Gezi trial:

“In the light of above-mentioned elements, taken as a whole, the Court considers it to have been established beyond reasonable doubt that the measures complained of in the present case pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence. Further, in view of the charges that were brought against the applicant, it considers that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders.”¹²

Endnotes

- 1 ECtHR Judgment, *Kavala v. Turkey*, 10.12.2019, parag. 7-8
- 2 Ibid. parag. 94
- 3 Ibid. parag. 146
- 4 Ibid. parag. 148
- 5 Ibid. parag. 149
- 6 Ibid. parag. 157
- 7 Ibid. parag. 151
- 8 Ibid. parag. 159
- 9 Ibid. parag. 196
- 10 Ibid. parag. 230
- 11 Ibid. parag. 230
- 12 Ibid. parag. 232

PEN
NORWAY

Filiz Kerestecioglu

Can Atalay

Mucella Yapici

Mine
Özelden

25 Nisan
2022

GEZİ DAVASI

Karar duruşması

Göğlayan



Interviews

PEN Norway has followed every hearing in the Gezi trial in which sixteen defendants charged with 'Attempting to overthrow the government' under Article 312/1 of the Turkish Penal Code. On 25 April, 2022 all defendants in the court room were sentenced to 18 years in prison and were immediately arrested. Defendant Osman Kavala, who was already in pre-trial detention was sentenced to life in prison with no parole. PEN Norway witnessed this shocking abuse of the justice system and interviewed each imprisoned defendant in turn. We are proud to share with you these inspiring interviews with these brave individuals who are at the forefront of the struggle to defend human rights in Turkey.



Illustration: Murat Başol

PEN Norway interview with Mücella Yapıcı:

“Gezi shall assume the “beautiful” place it deserves in the social history of this country and the world.”

May 9, 2022

Bakırköy Women's Prison

■ Mücella Yapıcı, you are a former member of the board of directors of the Union of Chambers of Turkish Engineers and Architects of Istanbul and founding member of the Taksim Solidarity platform. We as PEN Norway have monitored this trial against you in person for over 5 years. We would like to express to you our solidarity and also say that we condemn this judicial harassment you have been made to endure.

“ Here is the gist of GEZİ: It is a magnificent social resistance and awakening highlighted with art, humour, empathy, peace, and solidarity and performed by millions of people who could not stand this injustice, violence and plunder anymore. They collectively wielded their complaints and conscience and took no orders from anyone and ignored the religious, language, racial, age, gender, sexual orientation and political preferences of each other.

”

First of all, I would like to thank you very much for the humanitarian support and solidarity you have shown during this antidemocratic process we have been through and for your nice words that make us feel even stronger.

As an individual who always believes that the universal solidarity is very important for (and almost the only solution to) create a more just and liveable world in this tiny planet of ours in which poverty and hunger have been made unbearable by the socio-economic policies of brutal global capitalism, I'd like you to know that your presence and support are highly valuable for us.

■ How are you, how is your health, how is the place you are staying right now? How do you feel?

I am mentally and physically sound... I'm taking good care of myself, which is something I usually neglect in normal life. By the way, my dear roommate Çiğdem Mater is doing a very good job filling the gap that my daughters' absence has created.

We are staying in a temporary place for now. We currently live in a 9 m2 short stay unit (where I believe they normally keep condemned prisoners or those in solitary confinement). We have 1 hour of outdoor time a day. We are trying to find ways to live comfortably in a narrow space. I don't find it very difficult to do so, because as an architect I have been dealing with this rising trend of exorbitant use of space in residential architecture in the country with the belief that if well-organized, a space of 60-100 m2 could be enough for family of 4. But my dear friend Çiğdem is seriously uncomfortable... She can't even fit in the bottom part of a 2-meter bunk bed. Ergonomically speaking, nothing in Bakırköy Prison is designed with tall women in mind, as it is everywhere.

I feel as good as possible. It turns out that at my age, it becomes very important to have that “self-assurance” and this “inner peace” of having committed knowingly and willingly no humane, professional and ethical mistakes in your life.

Mücella Yapıcı
savunması

GEZİ DAVASI
24.03.2016



Illustration: Murat Başol

■ **How are our other friends Çiğdem and Mine? Please send them our love and solidarity.**

Çiğdem and Mine are also in good shape and resilient, as they know they have been rightful all along.

"There was no evidence as there was no crime"

■ **We could see no real evidence during our trial observations. Likewise, judicial procedures that complied with the rule of law were nowhere to be found... How did you manage to stand tall in the face of all this injustice and unfairness?**

It is only natural that there was no evidence as there was no crime. All the arguments put forward as evidence were obtained illegally and unlawfully and were based on illegal wiretaps to which we and our lawyers were not given any access and on malicious and misguided interpretations of press statements and social media messages that did not contain any "criminal elements" and are still accessible from open sources. Unfortunately, the judiciary is intent on imputing malicious intentions.

We have just two things on our side in the face of injustice and unfairness: and they are rightfulness and our absolute legitimacy.

■ **I think this unjust process has demonstrated the importance of Gezi even more. How would you describe Gezi in a few sentences to people outside of Turkey?**

The Gezi process is difficult to explain to people outside of Turkey. Because the whole process does not make any sense for countries that have an advanced democracy and for their citizens who are conscious of their democratic rights.

Think of it this way: Can anybody in your country erect a building in the middle of the most important square and park of your city? Let alone constructing it, could it even be conceived to do so? Moreover, can your administrators refuse to comply with the court judgments and expert reports that agree with your legal complaints?

The fearless and determined voices of women are still echoing in the streets

■ Half of the Gezi defendants were women. What do you think is the role of women in the struggle for freedom of expression and freedom of assembly? Or are we all in it together, regardless of any differences?

There is an extremely strong women's movement in Turkey. Considering that women, who are the main creators of civilization, have been oppressed for centuries by the patriarchal systems that usurp their rights, it should not be surprising that women are always at the forefront of all kinds of struggle for rights.

Women and youth were the most creative and productive participants of the GEZİ RESISTANCE. The fearless and determined voices of women are still echoing in the streets, which are either banned or mostly empty due to the current climate of fear. Which is extremely natural.



Mücella Yapıcı, 25.04.2022, after the verdict announced, Çağlayan Courthouse



Caroline Stockford (PEN Norway Turkey Advisor), Siri Berge Engerud (PEN Norway Communications Officer), Heidi Heggdal (Norwegian judge), Agnete G. Haaland (PEN Norway Vice President), Gezi Trial Monitoring, Çağlayan Courthouse

Can the authorities try to secretly demolish at night, together with the trees on it, the most important park in the country and the only open area in that region, which could be used as an earthquake meeting place and field hospital, just to build a pedestrian road which did not exist in their unofficial version of the project and which they forgot to build due to a mistake in the project?

Can they relentlessly spray tear gas at people (I was one of them) who are trying to prevent this illegal and unlawful destruction by hugging the trees and by asking them to comply with the law?

Moreover, can the young people who resist this unlawfulness and stand guard in their tiny tents in the park to protect that most important social common space be attacked in their sleep by the starting of a fire with gas canisters? Well, it is not uncommon that capitalist governments, unable to cope with their crises, resort to repressive and fascist methods all over the world. In other words, the way things are, what happened to us will soon happen to countries that think they are governed by democratic methods.

Here is the gist of GEZİ: It is a magnificent social resistance and awakening highlighted with art, humour, empathy, peace, and solidarity and performed by millions of people who could not stand this injustice, violence and plunder anymore. They collectively wielded their complaints and conscience and took no orders from anyone and ignored the religious, language, racial, age, gender, sexual orientation and political preferences of each other.

As the prosecutor said, it is "Sui Generis."

And people have a lot to learn from this magnificent and peaceful resistance,

They killed 8 of our children and a police officer (who fell dead from a footbridge, itself a crime committed against the city), blinded dozens of our young people and ruined their lives, caused bodily harm to many and damaged the health of thousands of our citizens.

No matter how much the current government and its supporters try to criminalize it, Gezi shall assume the "beautiful" place it deserves in the social history of this country and the world.

I will always be honoured to be a part of it...

■ **As an architect yourself, what is your take on the spaces created in Gezi? There were many different forms of spatial expression in Gezi Park. Can this be interpreted as an example of democratic and inclusive architectural practice? What was the driving force behind the establishment of Taksim Solidarity Platform? Why do you think the right to assembly and protest is important?**

The Constitution of the Republic of Turkey imposes duties and responsibilities to both the state and citizens for the protection of natural, cultural, urban and historical assets.

Moreover, professional chambers operating within the scope of Article 135 of the Constitution are public institutions. They are indispensable control institutions for democracy. That is why our constitution has given professional chambers the duty to warn the governments, and if necessary, to stop administrative decisions from being implemented by applying to the judiciary. Likewise, our domestic law and the international laws and legislations that we are a part of guarantee everyone's rights of meeting, assembly, organisations of demonstrations and marches, and the right to form platforms, associations etc. in line with their rights and demands.

Besides, these rights are universal human rights that have been gained thanks to centuries-long struggles.

The TAKSIM SOLIDARITY PLATFORM is an open solidarity platform established in 15 February 2012 after the call of Chamber of Architects and the Chamber of City Planners of TMMOB by all the actors and citizens of the city within the framework of this fundamental human right and the duties and responsibilities imposed by the Constitution with the aim of cancelling the project "TAKSIM PEDESTRIANIZATION AND RECONSTRUCTION OF TOPCU BARRACKS IN GEZI PARK" that was completely unlawful and contrary to the basic principles of architectural science and the public interest.

"It is extremely legal and legitimate!"

■ **Why is the right of assembly and association protected under the Constitution important as a universal right? What do you think the violence against Gezi Park protesters was aiming at and did it have the desired result?**

It is one of the indispensable conditions of democracy since ancient Greece:

Freedom of assembly and expression of the people

And it is one of the basic human rights. Regimes in which this right cannot be exercised go down in history as anti-democratic regimes.

"People managed to part the veil of fear and despair"

■ **What does the Gezi resistance mean to you?**

As a democratic defence of our rights and an act of protest in the face of police violence and injustice, Gezi Resistance opened up the possibility of a bright future for society thanks to the extraordinary unity it forged and the people managed to part the veil of fear and despair that has descended on the country, thus freeing themselves from being the policeman of their own minds.

I think it is mainly this enlightened opening that instilled fear [within the government]. There is an attempt to reinstall a climate of fear and oppression with us as the case in point. They are attempting to create such a climate and to superimpose a new kind of history upon the social memory by criminalizing that hopeful, colourful and creative history.

However, the support and solidarity shown after all these years and so many lies and oppression, has been a concrete indication that these efforts were futile. Many more years into the future, Gezi will defend its peaceful, creative, egalitarian and humanitarian history, in which everyone expresses and represents themselves. In fact, history is written by the people not by those in power.

I wish you love and health...

Thanks for your support and solidarity...



PEN Norway interview with Çiğdem Mater:

“These days will pass, we know it. Knowing we are in the right strengthens our state of inner peace.”

“ Naturally, there was nothing to feel remorseful about since we did not commit any crimes. This peace of mind that comes with knowing you are right and being innocent is priceless. This feeling I have has helped me a lot both in court and in prison since April 25th.

”

1 July, 2022

Bakırköy Women's Prison

■ We've seen the messages you've been relaying from prison. You've said, "I'm very well, because I'm in the right." But how are you at present? How's your health and state of mind?

Since the night of April 25th, I've have been detained with my co-defendant in the Gezi trial, Mücella Yapıcı, in a room of nine square meters including the bathroom. We are sandwiched in between a bathroom of 3 square meters, bunk beds of 2.2 square meters, with a two-door iron cabinet, a 90 by 90cm table, two chairs, a refrigerator, and a shelf with 4 drawers occupying the rest of the space.

The physical conditions of Bakırköy Women's Prison are quite bad, but the humanitarian conditions are good. We have limited time in the open air as we still haven't moved to a dormitory. Many lawyers and MPs visit us (I am grateful to all of them), which gives us a chance to go out of the room often and this is a blessing,

considering the conditions of the room... My health is good, and it is very important that it stays so, because we have serious problems in accessing health services.

■ **As a film maker you produced a short film based on the recent correspondence of Osman Kavala called 'Letters from Silivri'. But how does a film maker and journalist see the prison experience, when it becomes a reality and not only an observation from afar? Are there particular problems exclusive to women's prisons in Turkey?**

Not only as a journalist or a filmmaker, but as someone who is always curious about the world, I activated all my "receivers" from the moment I arrived here and tried to understand, learn and digest everything. One thing I didn't reflect on before coming here, but am realizing after my arrival, is the "masculinity of prison literature". However, a women's prison is a place with different needs and different experiences. Besides, this is a place where nearly 50 children stay because children up to the age of six are admitted here too. Therefore, not only women's but also children's needs must be met here. About 25% of the detainees and convicts are foreigners, and lot more than half of them are ordinary prisoners pending trial and convicts. This is a place where there are many women who are economically deprived and have no access to legal aid. Naturally, the economic crisis is having an impact in this place as well. For example, we are faced with increasing canteen prices every week. By which I mean, you are really stuck if you do not have family, friends or relatives who can provide financial support from outside. Drinking water in the prison is sold in 1.5 litre bottles which cost 3 liras each. Therefore drinking water alone is expensive and can be out of reach for some people.

■ **One of the charges against you in the Gezi trial was that you gave alkali-based Gaviscon to protesters in the Gezi Park protests to ease the effects on them of tear gas. We know that the use of pepper gas cannisters against protestors was excessive at Gezi. How do you feel about this charge? Are all kinds of help and solidarity between people under attack in Turkey?**

According to the indictment and the reasoned judgement that followed, one of the crimes I allegedly committed was that during a protest that took place near my office in September 2013 I distributed in Gaviscon to citizens who took shelter in the hall of the building where my office is located. Although the prosecutor did not say which particular legal act declares this to be a "crime", as far as I can tell, I had "attempted to overthrow the government" by spraying Gaviscon in the entrance hall of the building where there were people who'd been tear-gassed. Of course, this is one of the oddities of the long and bizarre indictment and the reasoned justification that followed, but it is a pathetic situation in terms of the disproportionate use of force by the police and our rights, which are guaranteed by international conventions. With many deaths during the Gezi protests such as Metin Lokumcu and Elif Çermik, we in Turkey have personal experience regarding the consequences of using pepper spray. This is an issue that needs to be seriously investigated.

"We were tried with allegations that were based on no evidence"

■ **During five years of monitoring these hearings in person, we at PEN Norway did not observe a single concrete piece of evidence against the Gezi defendants in relation to the charge of "Attempting to bring down the state by violent means". We observed instead that your basic rights and freedoms in relation to a fair trial were continually obstructed. How can you stand tall against such egregious and fundamental rights violations?**

The answer is already in the question. We were tried with allegations that were based on no evidence, completely unlawful, illogical, and contrary to the ordinary course of life. At the first verdict hearing we were acquitted, then this time we were sentenced to 18 years with the exact same case file. When announcing the judgment, the panel of judges said that there would be no reduction in the penalty because we did not express any remorse. Naturally, there was nothing to feel remorseful about since we did not commit any crimes. This peace of mind that comes with knowing you are right and being innocent is priceless. This feeling I have has helped me a lot both in court and in prison since April 25th.

■ **We know that through your film making you've made important contributions in highlighting the stories of women's lives. But we wanted to ask you this: half of the Gezi trial defendants were women. The women's struggle in Turkey, the way they organise and resist is an inspiration to women all over European, too. What do you think women's roles signify in terms of defending freedom of expression and the rights of assembly and demonstration in Turkey, and of course in the Gezi protests?**



The Gezi Trial may be the first case where the Republic of Turkey respects the gender equality. Well, this wasn't exactly what the women's movement intended in its perennial resistance and struggle for equality, but anyway that's still an improvement: 16 people were tried during the Gezi trials, and literally half of them were women. A great success!

But all jokes aside; from Diyarbakır to the Black Sea, from the resistances against the cutting down of olive trees in the Aegean region to the tremendous young women in Istanbul, the women's movement in Turkey inspires and excites us all. Women have been resisting and learning with great organizing skills since the 1980s, and we all make progress by learning from the previous and future generations and then we self-improve. Women are everywhere, and of course they were present during the Gezi protests, they were many; they did not back off from the streets, the nights and the parks. Despite all attempts to suppress social movements these days, the women's and LGBTI+ movement stand tall and do not obey. I cannot help but admire this.

"We're not the first, but hopefully we'll be the last"

■ When you were arrested, the judges stated that there was a "suspicion of absconding", using that premise to demand your immediate arrest. But we, and everyone in the court room, knew that you had returned from Germany specifically to attend this hearing. What do you say about this?

"Suspicion of absconding" is an extremely meaningless "suspicion" not only for me, but also for my friends with whom I was arrested and for Osman Kavala as well, who has been in prison for nearly five years. If we wanted to go, we would have done. If I had "done" something, was guilty of something, I wouldn't have returned to Turkey for that hearing. Everybody who knew about this process and read the files, including the panel of judges and the prosecutor who prepared the indictment, are aware that we are innocent.

I'm pretty sure the panel of judges in particular is aware of this. Even though the court of appeal, in its decision to quash the judgement, ordered a "re-examination of the evidence", the panel of judges hastily concluded the trial and handed down the judgement without asking a single question, that is, without actually fulfilling the demands of a higher court. Moreover, they arrested us on suspicion of absconding whereas normally arrest is not a method used in such cases. They knew we wouldn't abscond. We wouldn't have come in the first place if we were to run away. We were there, looking right into their eyes, telling all the truth even though they didn't listen. It didn't matter whether they listened or not, we made a footnote to history, we spoke our word.

These days will pass, we know it. Our righteousness bolsters our inner state of peace. We are not the first to have experienced this. The history of Turkey is full of similar examples. We're not the first, but hopefully we'll be the last.

PEN Norway interview with Mine Özerden

7 July 2022

Bakırköy Women's Prison

■ Dear Mine, How are you coping right now? Can you tell us about the conditions at the prison? Also how is your health and how do you feel?

I am staying alone in a 4m by 2.5m cell that has a bathroom and toilet. With an east-facing window that has 10x10cm bars, my cell gets the sunlight only in the mornings. But since it is on the top floor, I can see the sky and the birds. The furniture consists of a bunk bed, a steel cabinet, a table and a plastic chair. Its pink walls are filled with writings. The first days were a little difficult health-wise, as I had a cold at the time of my arrest, but I recovered in a short time. As I have been mainly busy with keeping my Mental - Spiritual - Physical health in balance during my time outside, I think I'm not doing bad in this regard.

As far as I understand, Bakırköy Women's Closed Prison is in a better position among other prisons due to its type and conditions. The majority of Prison Officers are civil servants pending appointment. Among the officers we met were some wonderful young women, most of them are educated, hardworking young women who had to do this job to make a living. They work in 12 hour shifts and on a contract basis. No new permanent staff has been hired for 8 years.

There is a significant pay gap between the permanent members of staff and the contracted employees. Prisons are administered by the Ministry of Justice, while the Family Medicine Institution in the prisons by the Ministry of Health. This duality can sometimes lead to injustices in the daily practice.





Çiğdem Mater, Mücella Yapıcı, Mine Özerden, Bakırköy Prison

For example, I still haven't seen the result of my blood test that was done on May 12, 2022. My results were not uploaded to the e-health site, which is a national health monitoring platform. In prison, you communicate all your demands to the relevant units through petitions collected during the morning count. Although I have repeatedly submitted my petitions, I have neither been able to get a satisfactory answer regarding the results nor given a reason for this failure. I guess I'll have to take legal action now. Because this is an issue that concerns not only me but also 1450 prisoners/convicts in prison. It is necessary to struggle to correct this situation that violates our personal rights and the Constitution.

■ **You have been in the thick of the struggle for civil society your whole life. We also know that you laboured for the establishment of Taksim Platform long before Gezi incidents. In Europe, however, this platform became to be known after Gezi. What was Taksim Platform? Could you briefly tell us why people came together, what they did and wanted to do?**

Taksim Platform and Taksim Solidarity are two different structures that are often confused. Taksim Platform, which I voluntarily strived to coordinate, was established in the last months of 2011. Taksim Solidarity, on the other hand, is an umbrella organization that was established later on and has 128 different chapters across the country and it is under the coordination of the relevant professional chambers.

The beginning of Taksim Platform dates to December 2011; but its history goes even further than that. It is a long process weaved with the well-balanced attitude, personal experience and knowledge of our friends who have been struggling in different fields on similar issues... The short answer to question "How was the Taksim Platform established?" is: By necessity. In fact, I should underline that in this interview, I am describing my personal perceptions and experiences as someone who had witnessed Taksim Platform's struggle closely.

People who had ideas and suggestions about Taksim, among them individuals from very different convictions and fields, including experts in their fields, came together under the same sentence. The first meeting was on 26 December 2011 with the participation of 35 people from different disciplines and then the head of the Directorate General of Protection of Cultural and Natural Assets No. 2, and the first press conference was held on 17 January 2012. People began to call this civil and independent group, which formed spontaneously, as Taksim Platform. Taking shape was an independent formation

that was nonhierarchical, free from all corporate identities, and careful to ensure the democratic participation. Everyone is working completely voluntarily, and there are no salaried employees.

The President kept referring to us as 'Çapulcular' which means looters. All I can say is that, among us are all kinds of looters, privileged looters, academic looters, student looters, marketing looters, social scientists, journalists, filmmakers, activists, architects, engineers, locals, shopkeepers, workers, pensioners, disabled, and so on, everyone took on some responsibility. We were already so legitimate that one could take our whisper for a scream. This legitimacy gives you a courage that inspires self-confidence. Instead of using a quarrelsome language, you can be perceptive, calm and creative¹.

■ **In another message you sent to the outside, you said, "This case is not our personal case. Gezi has become a public movement. Gezi means honour". Why does Gezi mean honour? What can we learn from Gezi?**

I would like to answer this question with a metaphor. Mercury is my favourite element. It is both solid and liquid, conductive and dense. Its most important feature is its strong tendency to unite if shattered by an external impact. Just imagine the way its dispersed pieces quickly coalesce, and the growing portion exerts a gravitational force on the quick small pieces. The symbol for mercury is Hg. Shall we call it Halkın Gücü (the Power of the People) Once together, people feel safer, right?

■ **We have yet to see a real piece of evidence during the hearings. We have observed the violations of many fundamental rights and freedoms, especially your right to a fair trial. How could you hold your head high in the face of so much injustice?**

I guess it is thanks to my personal principles, my reasoning and self-confidence. I see the life through two simple principles: The first one is about making an endeavour to understand myself and the other, and the second one is about trying to avoid doing to the others what I do not want done to me, which we all learned when we were children. These two simple principles have been quite sufficient in my 57 years life.

I am not an optimist or a pessimist, but a rational and a strong realist. I also think that being an individual who knows what she does not want and plus my efforts to create a unified methodology of "Anthropology of the Individual" invigorated me to some extent. Besides, the history of humanity is full of all kinds of injustices... It seems that we will neither be the first nor the last, right? We are running just to stand still, and in our situation we are taking a step backwards to go two steps forward... Which may have its own advantages and is something to contemplate.

■ **You have recently pointed out that among the victims of this indictment are the people who are actually representatives of the opposition parties today. Do you believe that an effective opposition can be mounted today if they avoid expressing solidarity with you?**

For me, "realpolitik" means an ideal situation, whereas "the real politics" is the current situation. What I ask from the politicians is that they should interpret our instrumentalization by them through

“ I wish that not only the opposition, but also people from all walks of life whose rights were violated would express their solidarity with Gezi and with us. I think people from different walks of life should gradually intensify their practice of standing together on a minimalist common ground and bring this issue to the agenda and do that through democratic methods. ”

I find it more appropriate to call myself a “rights defender”

■ In a message you sent to the outside, you said “I am a human rights activist. And we are being held hostage here”. How do you explain this hostile attitude towards you and our other friends?

To be honest, this is something I simply cannot explain. This situation that is imposed on us with all its consequences, for me, is irrational, absurd, dystopian and ultimately resembles a Metaverse game, respectively. A rare artefact of the post-truth era. I do not call myself an activist in Turkish. I find it more appropriate to call myself a “rights defender” who fights for rights. I think that what we have been forced to go through is utilised to intimidate, frighten and pacify those who struggle like us outside. Of course, the idea of being instrumentalised in such a way makes me extremely uncomfortable.

the lens of “realpolitik” and act with dignity and honesty. As a person who is facing the consequences of her actions, I believe I am justified to demand this. Therefore, my expectation from the members of the 61st Government who parted ways with Erdogan is that they file a petition and withdraw their claims of being harmed rather than babbling around. I wish that not only the opposition, but also the people from all walks of life whose rights were violated would express their solidarity with Gezi and us. I think people from different walks of life should gradually intensify their practice of standing together on a minimalist common ground and bring this issue to the agenda and do that through democratic methods.

■ As a rights defender, how do you interpret the repressions against the freedom of expression and civil society organisations in Turkey?

Authoritarianism is a global problem. I believe we are experiencing a harsher version of it because we have been poorly governed for the last ten years.

■ In your defence, you humorously pointed out the fact that half of the Gezi Trial suspects are women and said, “The happiest thing about the trial is that it has achieved gender equality”. The women’s struggle in Turkey is going on with a strength that will inspire all women in Europe. What do you think is the role of women in the struggle for freedom of expression and freedom of assembly, and of course in the Gezi resistance?

Yes, we are currently imprisoned as 3 women and 3 men, with a demand for 18 years in prison, and for Osman Kavala to be sentenced to life. We had no idea that we were the “Secret Seven”.² Actually, I am not a fan of sexist interpretations... But if, as a woman, you are given a late start to life, you become a “feminist by necessity”.

I am more hopeful of the new generations. I am willing to take credit for ourselves and say that we raised them after all. Now we are educated by them. Class struggle is the fundamental concept, of course, but the female precariat is taking it much harder all over the world.

■ You kept saying “Taksim belongs to us all” during the Gezi protests. And it became a slogan. What do you think is the political and sociological meaning of this phrase? In your defence, you also said, “I endeavoured to make Taksim remain as a place of expression for people from all walks of life”. Could you elaborate a little bit on the relationship between public spaces and freedom of expression?

You can find my answer to this question in detail in my interview published in 3 Ecologies Magazine.

The phrase “Taksim Belongs to Us All” that managed to gather people around itself was not a mere slogan or a sentence, it was actually an objective analysis of the situation. Before the elections on June 12, 2011, Recep Tayyip Erdoğan, then the Prime Minister announced a project called the Taksim Project. There was no doubt that a new arrangement was needed in Taksim. Taksim is the most important public square in Turkey, also well-known globally. It is the common asset of people from all walks of life and all age

Taksim is a space for expression

Taksim is not under the domination of a certain social group like it is with the areas in Istanbul of Kadıköy, Nişantaşı or Fatih. It is the only space where people from different cultural codes can come into contact and feel each other...It is a space of expression.

Taksim is the first place that comes to our minds when we are sad, happy, when we think we have been treated unfairly, when we want to celebrate. Therefore we said, "Let's do something different this time. Let's not have the arrangement of Taksim and its surroundings shaped by a top-down decision in the form of a puzzle, as it was in the past. Why not ensure an implementation that would be a successful example and enrich the city in terms of ideas, and show the kind of management we aspire?"

We call on the city administration to perform its duty." The authorities still refuse to admit that "Taksim belongs to us all" despite the fact that it is certainly true. Holding an arrogant view of cultural diversity not as an indispensable wealth but as an opportunity to demonstrate their "tolerance", they want to keep Taksim for themselves only.

Out of sheer obstinacy, their aim is to prevent the cultural richness and social memory of Taksim, which it has sustained from the past to the present, from being bequeathed to the future. It seems that it is not only a matter of leaving their mark on the public square, but to change its appearance altogether, to sever its ties it has with the past.³

■ As peoples and civil society organisations of Europe, what can we do for you?

In my opinion, the essential thing anyone can do for all of us is to "refine" ourselves... Instead of working in jobs that reproduce the system again and again, we can explore and try a lifestyle that makes living in harmony with the "ecosystem" its main focus. My motto is to aim to be "authentic, sincere, refined". It is easiest to be sincere, authenticity is more difficult, and the most difficult is to refine yourself. Not running after something beyond necessary, making inroads for equally sharing the world's blessings. Not consuming the ecosystem by grinding it off. In my opinion, as developed and developing countries, we are currently a burden on Africa's back, one of the oldest continents. I don't know if another world is possible before we realize that the oppressed is also the oppressor.

I am writing you with the hope that we are not too far from the days when we will be equal subjects of a planet without discrimination.

Endnotes

- 1 At the request of Mine Özerden, this paragraph is quoted from her interview in the Summer 2013 issue of 3 Ecologies Magazine.
- 2 Secret Seven – Children's adventure series by Enid Blyton. Mine Özerden expressed her wish to make it known that she was referring to this series that she used to watch a kid.
- 3 At the request of Mine Özerden, this paragraph is quoted from her interview in the Summer 2013 issue of 3 Ecologies Magazine.



18 Temmuz 2019
Gezi Davası
Can Öztatalay, Gökdeniz
Mucella, Yaprak ve Mustafa
diğer sanıklar
Avukatların dinliyor

PEN Norway interview with Hakan Altınay:

“To be a decent person in a just world is a fine achievement but what is more critical is how to stay decent in an unjust world”

20 September 2022 - Silivri Prison

■ First, can we ask about your prison conditions? How are you? How is your health?

The physical conditions aren't very bad. I share a cell with Can and Tayfun who are also part of the same trial. We have 3 beds, 3 chairs and a table. We purchased a small TV, a mini fridge, and a device to brew tea. The food is OK, as we purchase additional items from the prison store. We have a small courtyard where we do some exercise. Prison guards are decent, we get to see our family members for 60 minutes per week, which is the highlight of the week. The real challenge is less to do with physical set up and more to do with how best to comprehend and respond to, profound injustice.

■ We were struck by your versatility when we read your working history in your resume. Apart from your political science education at Boğaziçi University and the New School you studied social anthropology in Oslo. As well as this, there are jobs such as blacksmith apprentice and commis chef.. What effect do you think living in all these unique geographies and having these different professional experiences has had on you?

I am 54 and life has turned out to be far more interesting and rewarding than I could have imagined when I was, say, 14. I was able to travel extensively, pursue diverse and ever changing interests. What I had to write was deemed interesting enough to be translated into languages ranging from Chinese to Icelandic. Gracias a la vida, as the song goes.

Norway was important in all this. I have been fortunate to have met some wonderful people, some of whom are still part of my life. Conversations around kitchen tables at Elverum, Majorstuen and Sogn Studentby by are part of me, as are my social anthropology studies at Blindern. Anthropology's perseverance to understand is very precious in today's world where our indignation muscles are quick, but curiosity muscles have atrophied.

"The whole thing would put Kafka to shame!"

■ **We published our work on the indictment(s) of the Gezi trial in 2020, and we have personally attended almost every hearing of the Gezi trial from abroad. What do you think are the most absurd, unacceptable points of this long judicial harassment?**

I am glad you observed the trial process yourself, as it is not easy to reconstruct the absurdity of the whole thing for people who do not have their own direct experiences to rely on. As you note, all of us were acquitted by the unanimous decision of the judges in 2019. During the most recent retrial, not a single piece of new evidence was presented, no new witnesses testified, and unbelievably, not a single question was asked by the prosecutor or the judges. At the end, one judge said he saw no evidence was committed, but two judges were able to sentence us to 18-years in jail as well as an aggravated life sentence. This is simply surreal. The whole thing would put Kafka to shame.

"Two judges were able to play with their phones throughout the trial and then convict us"

■ **We know that you were previously acquitted in this trial. Can you tell us how it feels to face a retrial after your acquittal? Is there anything we can learn from this reckless, hostile attitude? If so, what is it?**

I have recently been thinking about how we listen and the miracles involved in simple but wholesome conversations. What strikes me the most in the most recent trial process is how the judges were able to shut themselves to everything we said. I am willing to bet that if we had 100 random people from the street, we would not find two people who would be willing to convict us. Yet two judges were able to play with their phones throughout the trial and then convict us. I did not think such cross inhumanity was possible. Apparently, it is.

■ **For us, you are part of a group of people who have become symbols of democracy and human rights in Turkey. You have stood up for the right to assemble and demonstrate, for freedom of thought and expression, for democracy and the right to peaceful demonstration. How do you explain the government's fear of these fundamental human rights and freedoms? Or in another words, why do you think fundamental rights and freedoms are under constant attack in Turkey?**

Rights as things we are ready to defend even for our foes is not an easy temperament to achieve. I do not mean to argue that there is no progress, but it is slow. We should also note that the July 15 coup attempt has shaken Turkey more severely than our European friends care to appreciate. When insecure, countries, governments do unwise things.

“During the most recent retrial, not a single piece of new evidence was presented, no new witnesses testified, and unbelievably, not a single question was asked by the prosecutor or the judges. At the end, one judge said he saw no evidence was committed, but two judges were able to sentence us to 18-years in jail as well as an aggravated life sentence. This is simply surreal. The whole thing would put Kafka to shame.”

Gezi brought together several groups who viewed each other with suspicion

■ Are you still proud of the Gezi resistance? Can you explain to the world what you think the Gezi resistance has left for today and the future?

My cellmate, Tayfun, describes Gezi as 'camaraderie from below'. Gezi indeed brought together several groups who viewed each other with suspicion. Others described Gezi as a commitment to listen generously and to understand. When a police chief died, falling off a cliff as he chased the demonstrators, protestors returned to the scene with signs that said "Your loss is our loss. Your pain is our pain". This was a remarkable act of magnanimity. Gezi as an experiment in building bridges and civic bond is very important, indeed.

■ During the verdict hearing, we witnessed that your lawyer Tora Pekin's defense time was restricted. Mr. Pekin and others in the courtroom reacted to this situation. How did you feel at that moment?

That was indeed a surreal moment. The indictment is thousands of pages and wants us to receive an aggravated life sentence, but the chief judge thinks 48 minutes is too much for my defense. This is unheard of in Turkish court rooms. I should mention that the President of the Union of Turkish Bar Associations describes our trial as Turkey's Dreyfus Case. President of İstanbul Bar Association has called this case the worst case he has witnessed in the last 40 years. Former Presidents of the Republic, Sezer and Gül, also had very damning things to say about the verdict.

"My son, Ege, is in the hands of his very capable mother"

■ In an interview your wife gave after your arrest, we read that she tried to explain this injustice to your 2-year-old son Ege as a mistake and that Ege came to visit you. How would you like to tell Ege and all children about Gezi and this trial? How are you able to stand so firm and strong while dealing with all these processes and events?

My son, Ege, is my weak point. I am paralyzed with the thought of him needing me and me not being able to be there for him. Fortunately, he is in the hands of his very capable mother, and is surrounded by a lot of love. I don't know whether there is a good or appropriate age for children to discover there is injustice and evil in the world. It is clear that 2 years old is too early. To be a decent person in a just world is a fine achievement but what is more critical is how to stay decent in an unjust world. One thing that clearly helps is other decent people who are willing to do the right thing, even if it means a personal cost to themselves. Ege is now surrounded by many such people. I hope this experience will be a source of strength for him in the future.

"International civil society organizations do a fabulous job of documenting injustice"

■ What else can international NGOs do to support you?

I am grateful to PEN Norway for taking an interest in our ordeal, traveling to İstanbul to observe the trial and for bearing witness. I am equally grateful to Amnesty International for the "prisoner of conscience" label.

I also need to describe a challenge, without, I hope sounding ungrateful: Research, such as the one from Different Conversations Lab at Columbia University, suggests that we do not heed any criticism unless we first receive three positive messages from that party. International civil society organizations do a fabulous job of documenting injustice, but I wonder what can be done to establish goodwill. The Universal Declaration of Human Rights and other canonical texts talk about spirit of brotherhood. The French revolution had fraternity along with liberty and equality but somehow those sensibilities fell through the cracks. I personally believe in those values, as well as their indispensability if our critiques are to be heeded.

■ **We have learned that you can have ten books at a time in prison. What books are you reading now? What books are on top on your wish list?**

We are allowed to keep 10 books per person in the cell. My reading list is fairly eclectic. This week it is Ömer Hayyam, Ursula Le Guin, Gabriel Garcia Marquez and Abdulrazak Gurnah. Next week includes Antonio Damasio and Viktor Frankl.

■ **If you wanted to convey a message to your students about all this, what would it be?**

For the last 10 years, I have taught university undergraduates, as well as 25-35 years old participants at our European School of Politics. I think of them less as students per se but more as people I have the privilege of thinking with. The next piece I plan to write is about bearing witness and virtues include in speaking the truth. The cases I have in mind to make my argument are that of the Arawaks and of Gorbachev. Both can be presented as failures because they did the right thing, but I want to challenge that assesment and tease out the role of people who bore witness in both cases. What would be very nice is to share my draft thinking with my students and receive their inputs.

Thank you for your interest you have taken in our ordeal. Your solidarity means a great deal.

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PEN Norway interview with Tayfun Kahraman:

“This is a revenge trial, not a normal legal process”

13 September 2022
Silivri Prison

■ **First, can we ask about your prison conditions? How are you? How is your health?**

Conditions in the prison are not easy to deal with but we are striving to improve them anyway. And by improve, I mean we are making the best effort to improve the conditions of this place with the tools that are available to us here. Despite all these problems and even though we are under isolation here, we continue to stay strong and firm with the awareness that we are being held here unlawfully. Me and my cellmates Hakan and Can are very well, we are in good health. As I am an MS patient, I must be under constant medical control. These conditions have been met so far and I am under regular medical control.

“ I realized that the government would not give up until it got the judgment that it wanted from these trials and until its aim to defame the Gezi Resistance through the judiciary yielded some results. That is why I was not taken aback by the continuous trials and retrials. Because this is a revenge trial, not a normal legal process. ”

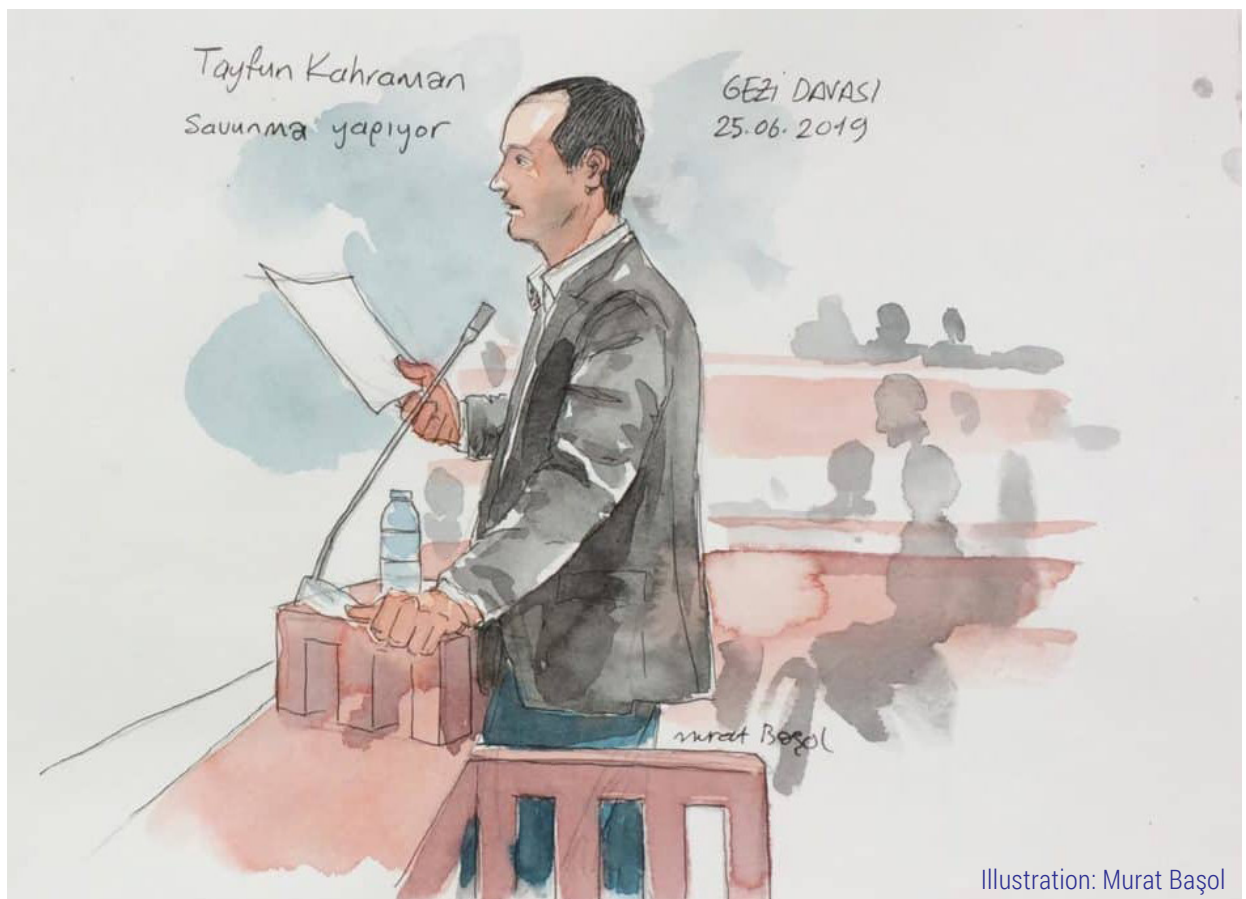
“**I knew that these trials would not end”**

■ **We know that you were acquitted earlier in this trial. Can you tell us how it feels to be faced with a retrial after an acquittal?**

Even after the decision of non-prosecution about me was announced in 2013 and my acquittal in 2020, I knew that these trials would not end, and that the government would always persist with them. Actually, I knew that they would mete out punishments on April 25 but I did not anticipate that they would issue arrest warrants. I realized that the government would not give up until it got the judgment that it wanted from these trials and until its aim to defame the Gezi Resistance through the judiciary yielded some results. That is why I was not taken aback by the continuous trials and retrials. Because this is a revenge trial, not a normal legal process.

■ **In one of your defence statements you made the following remarks: For 5 years, I worked at the Ministry of Culture as a Culture and Tourism Specialist. After Gezi Park, I found myself at odds with the Ministry and they displaced me to Gaziantep province. I was temporarily assigned to Gaziantep for a month.” We want to ask a question related with those remarks. Gezi Trial provides a striking example of the problem of overlong trial periods in Turkey. What was the impact -on your personal and professional life- of such overlong trial periods, of this judgment and your current situation?**

The overlong trial process you mentioned affected both me and my family. I had to leave my position at the Ministry because of the assignment. Then I was recruited as a lecturer by the Department of City and Regional Planning of the Mimar Sinan Fine Arts University, which had a more liberal environment. After the Gezi Resistance, however, my spouse was laid off from the university department where she had become an assistant lecturer as soon as she got her doctorate. For seven years, all her job applications



were consistently rejected by the universities because she was my spouse, and I was on trial in the Gezi Case. Even if the heads of departments agreed to recruit her, she was vetoed by the higher managements of the universities. Since the beginning of our marriage in 2014, the negative effects of lawsuits and trials loomed large on our family life.

■ In April 2022, together with Can Atalay and Mücella Yapıcı you submitted a very striking joint statement to the Court. You said “we reject this case” and added “we shall see the days when those who ruthlessly caused these deaths and injuries are brought to justice.” Do you believe that the fair trial will be restored in Turkey one day?

“The judiciary has always been a problematic field in Turkey”

The judiciary has always been a problematic field in Turkey and it has always been under the (sometimes weak, sometimes strong) influence of governments. But especially after the constitutional amendment in 2011, we encountered unlawful trials, which were unprecedented even during the periods of military coups. Following the Fetullah Gülen supporters’ plots and then the conspiracy cases of the government, a large part of the public in Turkey now believes and sees that the trials are not fair. Of course, a fair trial is possible, but for this the Turkish judicial system, which is being destroyed more and more every day, and the way it functions need to be re-established so that it can hand out real justice.

■ What do you think are the most absurd and unacceptable points of this trial?

The most absurd aspect of the case was that our defence statements were not heard, the evidence and witnesses were not allowed to be discussed, and the panel of judges hurried to hand down the judgment communicated to them. The panel observed all the baseless and unsubstantiated claims of the prosecution, which functioned like a government commissioner, whereas it refused our requests to discuss the evidence and to consult the witnesses on these issues. And as the sole reason for their unlawful refusal of these legitimate requests, the panel offered baseless, off-the-peg arguments that our requests were aimed at prolonging the proceedings. So from its beginning to the end, the trial was an absurd comedy.



“ The most absurd aspect of the case was that our defence statements were not heard, the evidence and witnesses were not allowed to be discussed, and the panel of judges hurried to hand down the judgment communicated to them. The panel observed all the baseless and unsubstantiated claims of the prosecution, which functioned like a government commissioner.

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■ **For us, you are member of a group that has become the symbol of democracy and human rights in broader sense in Turkey. You stood up for the right to assembly and demonstration, freedom of thought and expression, democracy and the right to peaceful demonstration. How do you explain the government’s fear of these basic human rights and freedoms? Or let’s put it this way, why do you think fundamental rights and freedoms are under constant attack in Turkey?**

The government believes that fundamental human rights and freedoms, and even the exercise of the constitutionally enshrined rights are a threat to its own existence in Turkey. The government is aware that its legitimacy will be undermined if workers, students, political parties, and all dissenting citizens take to the streets to speak out about the contradictions, mistakes and unlawfulness of the government. The government secures its own political unity by oppressing those demands and those who voice them. This oppression is perpetuated sometimes through threats, police violence and unlawful decisions made by the judiciary, which in turn strikes fear into the society and renders invisible the claims for further rights.

■ **Your defence attorneys set a unique example of a legal defence under very difficult conditions. Are you proud of your legal defence team?**

It is not easy at all to defend in this case, to be a lawyer. Our lawyer friends have knowingly put themselves through a baptism of fire. This was not a single-front defence put up against the ruling power but included the genuine defence of the greatest resistance of Turkey. Our lawyer friends performed wonderfully in both. For this reason, history will record these honourable and brave lawyers as the pride of the country. Of course, I am proud of these people, who are both my lawyers and my friends.

■ **The public knows you as an urban planner, but you are an academic who holds a PhD in the field of political science as well. This intersection brings to mind the right to the city. What is the right to the city and why is it a fundamental right? Can you please briefly explain this?**

Let’s start with the question of what the right to the city is not. The right to the city is not only the right to participate in decision-making

processes and to use public spaces. The right to the city is to be a shareholder in all the benefits produced by the social life in the city; it is the right to live together on the basis of social, spatial and economic commons. As H. Lefebvre, who introduced the concept of the right to the city to the literature, said, "the right to the city is like a cry and a demand." The right to the city is a new field of urban politics that is based on rights and that gives the people have a say so as to ensure social justice in the cities and ensure everyone's access to the city.

■ **We have been informed that you have the right to get books in prison. What books are you reading right now? And what are the books you are planning to read in the future?**

Yes, the only upside of being locked up here is the opportunity to read as much as we could not do outside. I read 5-6 books a week and keep my 10 books quota by changing those books every week. In terms of accessing books, we are very lucky to have our attorneys and the people of Gezi (both the people we know and don't know) who mail us books. We read both the books they have authored or chosen to send and the books we asked from our attorneys. I am currently re-reading David Harvey's *The Limits to Capital*, this time by working on its Turkish translation, taking notes and spreading it over a long period of time. Simultaneously, I keep reading literary works. Today I began reading Robert Charles Wilson's *Spin* trilogy. I will then continue with what my friends mailed me and recommended. At the same time I will start reading the Zoning Legislation in order to conduct my planned studies.

"They should always be brave in defending their cities!"

■ **What else can international non-governmental organizations do to support you?**

International NGOs can take a closer look at our country and try to understand what is going on in Turkey. It is important that in the international arena they give voice to us and others who fight against unlawfulness and expose those unlawful acts everywhere. There are projects undertaken to do so and we would like to thank all the institutions that have supported us so far. But we expect them to make the unlawfulness in Turkey more visible in the international arena and to explain the Gezi Resistance to the peoples of the world.

■ **If you could send a message to your students about everything that is happening, what would it be?**

In the defence statement I gave to the court, I said the following: "How could you expect my students to be brave at the very beginning of their professional lives as they witness their professors who protect the city and their profession having to make such a defence?" As I always tell them, they should always be brave in defending their cities, professions, human rights and freedoms. Because for a better world, we need urban planners and young colleagues who stand by the urban rights and life itself. We will have healthier, safer and more sharing cities when they relentlessly put into practice the professional ethics and principles that we have learned and advanced together.

The Gezi Resistance was the embodiment of a persistent venture for unity

■ **Are you still proud of the Gezi resistance? What message would you like to send to the world about the Gezi resistance, this trial and judgment?**

Of course, I am proud of the Gezi Resistance and the fact that I was there. Not only me, but millions of people in Turkey are proud of their resistance, which is rare in the history of the world.

The history of the world has recorded and will continue to record many rights- and freedoms-based resistances such as the Gezi Resistance. There were similar popular movements before the Gezi Resistance and there will be after as the peoples' world-historical pursuit of their rights will continue and expand. The Gezi Resistance was the embodiment of a persistent venture for unity, and we are going to build a better world and prevent the government from shattering this unity once this demand for unity spreads across the peoples of the world. If there is a price to be paid for this, we are ready to pay it. I am sure millions of people worldwide stand with us in this struggle and they want to unite.

PEN Norway interview with Can Atalay:

27 September 2022
Silivri Prison



■ We know that as a lawyer, you have often been visiting your clients or your imprisoned friends in Silivri F-Type Prison. You are now on the opposite side of the visitor's desk. First, let us ask about your prison conditions? How are you and how is your health? Is there anything that makes staying in an F-Type Prison a different experience than in other prisons?

First, let me start by saying that Silivri Prison No. 9 can less be legally described as an "F-Type Prison" than a "sui generis" space. F-Type prisons and the persistent objection of the social opposition against these "cell type" prisons are well known. They put a lot of effort into building the "F-Type" prisons as embodiments of the "wall of fear" facing the social/political opposition. Legally, however, the Prison No. 9 is not an "F-Type". As far as I can tell, the intention was to allow some flexibility to the prison administration in its dealings with the group of prisoners called "all stars".

We arrived around midnight on April 25. Hakan, Tayfun and I are staying together. Theoretically, we are permanently under lock and key in our 3-person cell. I say theoretically, because thankfully our lawyer friends come to visit us regularly during the day, and "now and then" the two locks and a sliding door are opened. Once a week, we can have non-contact visits with our relatives behind a glass partition and over the phone for one hour. And once a month, we have contact visits which means being able to hug our loved ones. Once a week on Tuesdays, we can make phone calls with our families for ten minutes. Our cell is set out over two storeys with three beds and three

"Gezi is proof of how important the pluralistic nature of democracy is, and that pluralism is possible even when we are under blinding tear gas and plastic bullet attacks."

closets upstairs, that's all. Below there is an area of 23m² and that includes the under-stairs area. The bottom floor contains a plastic table, three chairs, a TV and a mini fridge. We can't say the food is amazing, but we manage. Hakan's salads, especially, (he makes them at least once a day) make everything easier. The maximum number of books we can keep in the cell per person is ten. Our health is good. Aside from some previous ailments we used to have, I can say that all three of us have not had any particular problems so far. I forgot to add: Once a week on Wednesday mornings we meet to exercise. After walking and chatting on an astroturf pitch, we play competitive football matches. "Isolation" is a difficult thing.

■ **In Turkey, you are known not only in relation to the Gezi trial but also for your work as a lawyer in legal cases concerning mass deaths of workers caused allegedly by employer-neglect. Cases such as the mining disasters of Soma and Hendek and the Çorlu train crash. Could you tell us about your interest in representing these particular cases?**

I am a socialist. I think it is vital for humanity to transcend capitalism; and this conviction is strengthened with every passing day we are stuck in the grip of ecological crisis.

On the other hand, in relation to Turkey's future, a country whose social/political/institutional structure has been destroyed by neoliberal policies, I find two concepts to be very important: exploitation of poverty and social murder.

Exploitation of poverty is a concept we use to define the ways a relevant interest group or a sovereign profits as a result of the impoverishment of the people or deprivation of their rights; profits for which the rights of our people are oppressed and disregarded.

Social murder, on the other hand, is a concept we use to indicate the deaths caused by the profit/market conditions and/or the processes of exploitation of poverty under which the public services are provided.

"The cheapest cost item of Turkish capitalism is the lives of its workers"

The Soma mining disaster was all about coercing adult males to comply to work under life-threatening conditions which itself resulted from the elimination of agriculture and peasantry in a large basin. 301 people, who were husbands, brothers, and fathers to some, 301 workers are sent to die an evident and quick death, despite the fact that it was a foreseen risk with all the necessary measures previously planned and their implementation costs were budgeted for which even an extra amount of additional coal quota was allocated.

What happened in Hendek, another town of Turkey is the result of a deliberate choice which takes the cheapest cost item of Turkish capitalism to be the lives of the workers, in an effort to avoid paying the costs of occupational safety measures in a factory where there is an explosion at least once every year and a worker died already in 2014.

The Çorlu train crash was almost, if I may say, a petri dish case showing how privatisation could be transformed into a murder

“ The Soma mining disaster was all about coercing adult males to comply to work under life-threatening conditions which itself resulted from the elimination of agriculture and peasantry in a large basin. 301 people, who were husbands, brothers, and fathers to some, 301 workers are sent to die an evident and quick death, despite the fact that it was a foreseen risk. ”

weapon. As a result of the arrangements made on account of “market conditions”, 25 people died on a railway line that had never had an accident in its history of more than a century. We do not know the exact number of injured. The “indictment” is still pending despite the expert reports stating that the responsibilities should be specified from top to the bottom in the case file, which by the way witnessed attempts to impute the entire incident on four employees at the lowest level in order to close the case completely.

The Aladağ case is a concrete example of how education can become a right only if it is accessible to everyone without exception. In this case, people from the remote mountain villages of Aladağ strove to continue the education of their daughters after primary school. Under the guidance of the Director of the District Directorate of the National Education, the families were pushed to place their children to a student dormitory which was operated by a religious order as there were no public student dormitories in the district centre. Those who follow the news from Turkey should have an awareness that political Islam has been given the green light against the left, and in the field of education, the religious orders have been allowed to operate student dormitories. Previously, there were statements by the children who were forced to wash the dishes which indicated that there was an electricity leakage in Aladağ. Despite this, twelve people, eleven of them children, died as a result of the blocked fire exit doors that were locked so as to keep the girls inside.

We advocate to put an end to these “social murders” and “exploitation of poverty”. Our practice as lawyers is an effort both to prevent these incidents from being covered up and to contribute to democratization by making gains in the field of case-law, even under the unfavourable conditions in Turkey. My professional life started with cases regarding the protection of natural assets, the right to the city and freedom of expression and took a relatively recent turn which I very much cherish.

■ **Do you think that these choices that you made in your professional practice and that the nature of the files you used to defend played a role in making you a target to be pulled into the Gezi trial?**

The reasoned judgment of the Gezi Case includes a chapter about my practice as a lawyer. But I think that it failed to cover all that I have been trying to say about our practice of law as regards to the issues I mentioned before and to other social and political cases. Gezi is such an important issue both for them and for us that I believe they decided to postpone other issues that they would like to make points concerning.

“Unjust detention during a trial is an irremediable problem in Turkey”

■ **We were all in shock at the final hearing, where the judicial panel ordered along with the verdict that you should be arrested on the spot. We want to ask you this, especially since you are a lawyer. Is detention straight after conviction a common practice in Turkey? Taken in the context of technical law, does this detention order have a legal basis under the Code of Criminal Procedure?**

Unjust detention during a trial is an irremediable problem in Turkey. Usually, a person who may have already been in pre-trial detention during the trial is released once the judge convicts them, provided that she or he has not been given a very heavy punishment. This is because cases are often subject to a protracted appeals process and the convicted person is usually allowed to remain free until this process comes to an end. Our case, however, was the exception. As defendants who were on trial and facing aggravated life sentences, we were released pending the verdict. My co-defendants Tayfun Kahraman, Mucella Yapıcı and I were not even taken into custody. For a long time we did not have a travel ban or any other security measure. In effect, this demonstrated that we could leave the country, to abscond, if we so wished. Of course, we did no such thing. Everyone was sure that we would be punished as a result of the President’s long-standing insistence, but the prevailing opinion was that we would not be arrested.

You asked if there is a legal basis in the context of “technical law”, and the answer is very clear: No, there is not. Article 100 of the Code of Criminal Procedure prescribes the conditions for detention. Article 100 of the CCP clearly states that in the absence of other conditions such as the possibility of absconding and tampering with evidence, the expectation of a high penalty alone cannot be a reason for detention. The verdict is inconclusive as given by the 13th Assize Court of Istanbul, with two judges voting yes and one other voting against, on account of the “lack of evidence here, and even if the evidence exists, a crime does not.” In other words, the aforementioned judgment will only be finalized



PEN Norway Turkey Adviser Caroline Stockford and BHRC member Kevin Dent QC observe the Gezi trial hearing at Silivri Prison.

after the case is first considered by the Regional Court of Appeal, and then the Court of Cassation which is the highest authority in the land.. There is even the Constitutional Court stage where the court will have to rule that “there is no violation of rights”. But we were arrested and imprisoned thanks to the decision of two of the three presiding judges.

And, I’m not even going to mention the judgments of the European Court of Human Rights that persistently demanded the freeing of our detained co-defendant Osman Kavala!

“Using all legitimate means, we objected against the government’s attempts”

■ In your defence statement in June 2019, you described the indictment in this case as a “ragbag”. Within the scope of the Turkey Indictment Project we analysed the Gezi indictment and published a comprehensive report, and we know very well that the indictment fails to meet the requirements of domestic law and multiple international criteria. The charges brought against you, however, have some outstanding features. It hasn’t been much of an issue, but many of the charges seem to be related to your being the lawyer of the Chamber of Architects. Could you explain a little bit about this aspect of the charges brought against you?

We were targeted because Mücella Yapıcı is an architect, Tayfun Kahraman is a city planner and I am an lawyer and here we are now, in prison. I am the lawyer of the Chamber of Architects. Using all legitimate means, we objected against the government’s attempts to pour concrete over the last remaining public green space located in the city centre. The Gezi Park in Taksim serves as an assembly point for surrounding neighbourhoods for potential disaster such as earthquakes. An earthquake of huge proportions has been forecast for the Istanbul area in coming years.

Soma, Aladağ, Çorlu, Hendek...

Those responsables are sentenced in the public conscience

■ Following your arrest, many references were made in the public to the Soma mining disaster case. The two most prominent lawyers of the case, first Selçuk Kozağaçlı and now you, are under arrest and you are in the same prison. However, we know that the defendants of the trial, which took place after the death of 301 mine workers, are now free. Should this fact tell us something about the judiciary in Turkey?

None of those culpable for the deaths of 301 workers are currently in prison, but I was sentenced to 18 years. Selçuk, on the other hand, is about to complete his 5th consecutive year in prison. This situation alone makes any other words about the state of the “rule of law” in our country redundant. However, I would like to emphasize that even under these conditions, the lawyers are doing a wonderful job. The judgment of the Court of Cassation dated September 2020 in the Soma Case and the subsequent actions of the political power to rule out that judgment; that judgment in Aladağ case, which was for us insufficient but still set a historical precedent in the history of our judiciary; and peoples’ support for the cases in Çorlu and Hendek: They are all very valuable. These four cases and others have already been won in the eyes of the people. “Those responsables are sentenced in the public conscience.” After all, this in itself is very valuable.

We informed the public and we filed lawsuits regarding each administrative action taken on the subject of building on the Gezi Park. Under normal conditions and within the framework of our Zoning Law, it is clear that such administrative actions should be cancelled or in other words, the cancellation of such actions is the minimum requirement of the “rule of law”. Moreover, in mid-May 2013, the expert report obtained by the Court’s order on the subject was communicated to us and the relevant administrative authorities and it said “Don’t touch Taksim’s Gezi Park.” Despite all these conditions, some subcontracted workers, who were uninsured by the way, started to uproot trees illegally; citizens who objected to this were met with police violence, which made the objection even more fierce, and which in turn made the police violence even worse, and eventually all citizens who had objections took their objections to the streets. Pluralism of objections and the demand for equality and freedom rising from a grass roots resistance is rare in human history.

“Objections, demands and social groups have coalesced in a way that was unprecedented. On the other hand, the Gezi Resistance is also important because it is “pluralistic” not “monistic”. It is the proof of how important the pluralistic nature of democracy is, and that pluralism is possible even when we are under blinding tear gas and plastic bullet attacks.”

Imagine being a lawyer: What would you do? Would you stand in solidarity with those who objected to the removal of the trees or would you prefer to stay home and shut your doors and windows tightly, especially at that moment when you were expecting a court order to halt the construction in a lawsuit you believed to be justified and have filed in the face of political pressures?

“In Turkey, there is a certain tradition of legal defence practice not bowing to oppression”

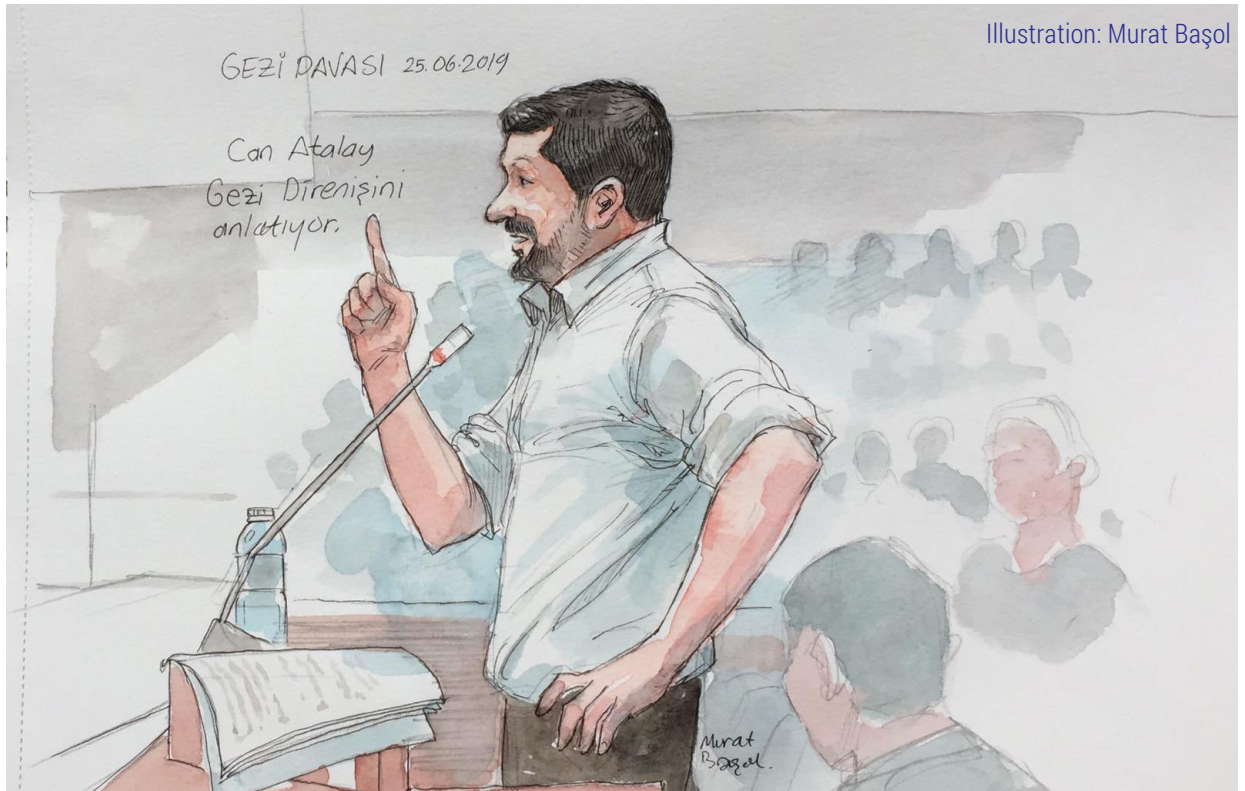
Would you cite Article 90/1 of the CCP that the citizens could perform a “citizen’s arrest” if they had come across someone who committed a crime such as attempting to destroy the very last green park in the city centre with an illegal construction project, or would you just not bother and turn to your next court case waiting for your attention? Would you not object to the “criminalisation” of these demands of people who claim their most basic rights, on which the Turkish Court of Cassation and the ECtHR have a clear case law? We filed a lawsuit, we resisted the attempts to hastily take the park away from us ahead of the court’s reversal order, and we did not give in to the oppression.

In Turkey, there is a certain tradition of legal defence practice not bowing to oppression; and I hope this tradition continues into the future.

“Freedom of expression here is as important for the lawyer as it is for the client”

■ In all hearings, but especially during the final ones, we witnessed that the defence lawyers were frequently interrupted by the panel of judges. In fact, your defence statement was interrupted more than once at the final hearing. Is there a certain time limit in Turkey that must be observed during the defence statements? What does freedom of expression mean for an lawyer? Is it a mere personal concern for her?

In Turkey, there is no legally prescribed time limit that a defence statement must observe. But as the presiding judge acts as the supervisor of the hearing, he hides behind this authority and attempts to impose a limit on this duration. All “rights” related to an lawyer and the legal defence practice in general are also their



liabilities. Regulations that govern the searching of a lawyer's body, bag and office are mainly in place to protect the rights of their clients and to ensure that lawyers can provide proper legal assistance to their clients. For this very reason, freedom of expression here is as important for the lawyer as it is for the client.

■ Again, your defence statement in June 2019 included the following words: “The Gezi Resistance can be summarized in two main concepts. I think of the Gezi Resistance as a constituting will. It is a will that demonstrated the need for the reconstitution of democracy and the ideal form it should take. Gezi Resistance is a movement of objection. It is a movement of objection that mobilized a constitutional right.” From the beginning of the trial to its end, “Defending Gezi” has been something you’ve always emphasized. Could you briefly explain the Gezi resistance to our readers? What does it mean for Gezi to be a “constituting will”?

Our Gezi Resistance began with an objection against the attempts to pour concrete over a green public space, which caused anyone with an objection to take it to the streets together with an indignation against the police violence that became enormously massive all over Turkey. Objections, demands and social groups have coalesced in a way that was unprecedented. On the other hand, the Gezi Resistance is also important because it is “pluralistic” not “monistic”. It is the proof of how important the pluralistic nature of democracy is, and that pluralism is possible even when we are under blinding tear gas tear gas and plastic bullet attacks. It is an important illustration of the popular will and contribution of ordinary people that politics entails. “Democratizing the democracy”, millions of democracy defenders showed that a pro-freedom social/political line would triumph over political Islam.

“Gezi is a constituting will”

■ Marx claims that what mattered most about the Paris Commune of 1871 was not any ideals it sought to realize but rather its own “working existence”. It is the same for the Gezi Resistance. Joint decisions were made by people who had markedly different ideas and who then went on to resist, and even if only in Istanbul, inside the Park, it has been the solidarity itself not the government which was decisive even for a couple of days, despite the fact that there was not any decision reached in any meeting, and a “commodity-free” space, where you can meet all your needs without money, was created: These were important.

Gezi is a “constituting will” in that it pointed out the possibilities as well as being an objection about the current state of affairs.

Rest will be a “political process” and the balance of political forces will determine our situation

■ **What about the future? Since you are the only lawyer among the defendants, we wanted to ask you: how do you envision the process developing from now on?**

I have various “legal” predictions, even visions about it, but I do not want to bore the reader with details, as the rest will be a “political process” and the balance of political forces will determine our situation.

However, considering the previous decision, it is a legal imperative for the court of appeal to issue an annulment decision even at the “first examination” stage; I would like to emphasize that if the Constitutional Court is to keep its very own legitimacy, a decision of violation of rights regarding us without delay is a minimum requirement for that to happen.

“They want people to stop claiming their rights”

■ **In your defence statement, you made a point that we think should be a topic of debate among the law students and it was as follows: “I object to a legal order that speaks about citizen’s obligations without speaking about their rights.” Could you tell us a bit about that?**

Thanks to the centuries-long struggles of humanity, rights and freedoms have been transformed into constitutional texts and become supranational legal norms. Like all of us, I think this is precious. In this “neoliberal era”, however, all over the world, but especially in Turkey during the AKP period as its radical expression, they want us to stop talking about the rights (and freedoms) of citizens and to give up asserting our rights. All they want to hear about are our obligations which we are expected to fulfil completely. For example, citizens should pay taxes, but how that tax is spent to fund some underground business should not be questioned or discussed. An important feature of the AKP is that they want people to stop claiming their rights, and let Erdogan bestow “favours” and help the groups he sees fit. As seen in the Gezi indictment, all they want is to stop us from talking about the right to the city, which gained mention in Turkey’s Constitution as the citizen’s “right to live in a healthy environment”, or the collective use of freedom of expression. Instead they would have us strictly comply with the orders and instructions of the police chiefs who act (blatantly) against the law! I consider this to be an unacceptable act against human dignity.

“The Gezi Trial has been a ‘political process’ from beginning to end”

■ **The following statements at the final hearing were also striking: “Your Honor, this is not a judicial operation. IAs someone who is being tried in an assize court I have to say that this is rather a political operation.” Do you think that there is a political motive behind the criminalization of the Gezi protests? That was certainly the finding of the European Court when they examined Osman Kavala’s case.**

The Gezi Trial has been a “political process” from beginning to end. We are talking about an investigation that lasted more than nine years, and about the persistent efforts to explain Gezi with a mind-blowing conspiracy theory with the intention of defaming it that goes back to the period of the Fetullah Gülen supporters and AKP coalition, and which continued even after this coalition collapsed. After we were unexpectedly and surprisingly acquitted in February 2020, President Erdoğan made certain statements that proved any other option than our punishment would be unacceptable for the head of state.

■ **What about the future? Since you are the only lawyer among the defendants, we wanted to ask you: how do you envision the process developing from now on?**

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“The image of the ‘young people hugging trees’ has proven to be unbeatable”

The image of the “young people hugging trees” has proven to be unbeatable. Those who protected, at the cost of their lives, a park that does not belong to anyone, but to all of us, became the source of hope for the whole of society. For the Fetullah Gülen supporters and AKP elites, the Gezi Resistance was a hard nut to crack through legal trials, and therefore they resorted to any means they could find to defame it.

A single example: Previously, a decision was made to merge our file with the file of a football team supporter group named Çarşı, as there was no element of “force or threat” involving us in the Gezi Case. But then, suddenly – and that really happened before our eyes– it was considered “risky” to penalize a group of football supporters, and their file was separated from ours and we were penalized in two hearings.

“They are trying to smear the Gezi Resistance through a court ruling”

They are trying to smear the Gezi Resistance through a court ruling; this is both an effort to “rewrite history” and a way of saying “don’t you dare do it again” by striking fear in the hearts of citizens who are trying to make themselves heard in public squares and on the streets.

The court’s decision on April 25, and the solidarity and reaction that emerged after our arrests show once again that their efforts have failed.

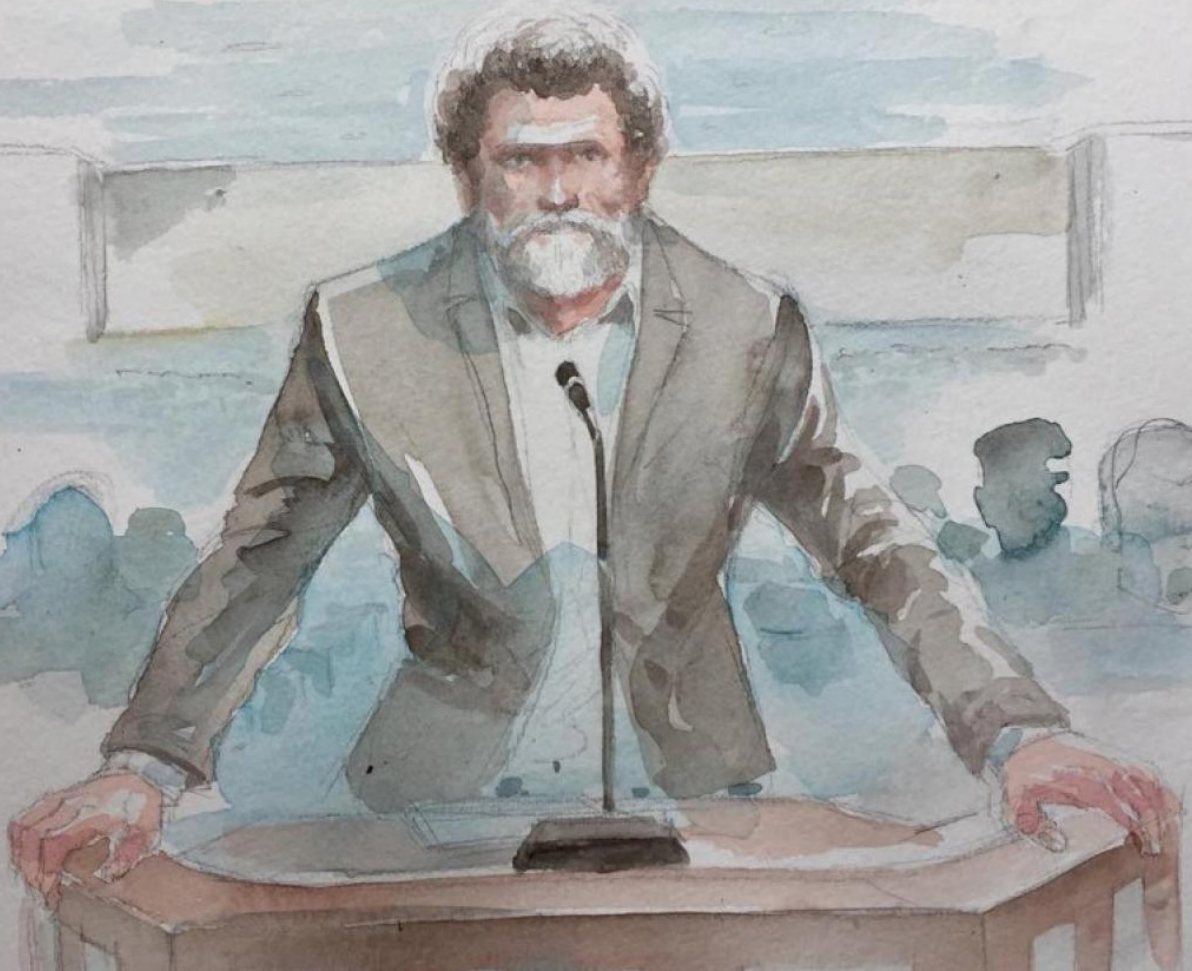
■ What books are you reading right now? And what are the books you are planning to read in the future?

Since yesterday, I’ve been reading “Out Stealing Horses” by Per Petterson. I started reading this book yesterday to hear a voice from Norway as I would be chatting with Norwegian friends. Just before that, I read Kristin Ross’s “Communal Luxury” and “May ‘68 and Its Afterlives” simultaneously. Once I finish “Out Stealing Horses”, I will start reading a selection titled “Commons”.

■ Finally, is there any message you want to give to us or to the international community?

At the beginning of this interview, I thanked you very much for your kind words and the high level of solidarity you expressed. We are all over the world, we are not few and we are all together. Let no one doubt: “We shall win.”

“ At the beginning of this interview, I thanked you very much for your kind words and the high level of solidarity you expressed. We are all over the world, we are not few and we are all together. Let no one doubt: “We shall win.” ”



PEN Norway interview with Osman Kavala:

“Gezi was a great popular movement that stood up against top-down policies and the restrictions of freedoms.”

1 November 2022
Silivri Prison

■ As you have been under detention for more than four and a half years, we would like to hear more about your health to begin with. How do you feel?

I’m in good health. I feel better on the days when I can see my wife and hear my mother, who is quite old, talking on the phone with a healthy voice. Support messages sent by the friends I know and am yet to know make a positive impact on my mood.

■ How are your prison conditions? And just as importantly, how do you organise your daily life in prison? Do you feel you are being productive despite the restrictions imposed by the prison?

This is an institution that runs according to the rules. As a high security prison, it lacks the problems caused by overcrowding that other prisons have. I wouldn’t say I’m being very productive at writing. This is partly because of my limited access to resources and lack of computer facilities. But staying alone in a single cell provides an ideal environment for reading.

The aim was to criminalize the anti-government mass protests

■ **As a matter of fact, yours was not a single trial based on a single file. You've been tried over and over from many files that were merged with each other. An acquittal was granted, but you were targeted once again. What is your take on all this? What do you think is the motive behind the decision to go for a retrial in the Gezi case and the subsequent pronouncement of such a harsh judgment?**

Five years ago, I was arrested on two charges, both of which lacked evidence and were irrational. The charges were: attempting to overthrow the government by organizing the Gezi protests and supporting the coup attempt of 15 July 2016. Following the coup attempt on July 15th 2016, the ruling parties constructed a discourse that foreign powers were trying to overthrow the government and years after the Gezi Protests they fabricated the Gezi trial in line with and in support of that narrative. I believe the aim was to criminalize the anti-government mass protests and to create the perception that such opposition movements were backed by foreign powers hostile to the government. Since no concrete evidence or information that support this claim existed, a conspiracy theory was constructed using the Open Society Foundation founder, George Soros. There is a widespread belief in our country that the protests against the regimes that inherited the Soviet Union's authoritarian experience had been organized by Soros. In the Gezi Park trial indictment, it was claimed that George Soros had given great support to these and the Arab Spring protests. Although I did not provide any financial support for the protests other than taking some cakes with me when I went to visit the Gezi Park; I think that in their scenario I was qualified for the role of the liaison person between the protesters and the foreign powers, as I stood against the destruction of the Gezi Park, and sympathized with the protests and also because I was on the management board of the Open Society Foundation.

In the minds of those who drafted the indictment, I was also qualified for such a role due to the fact that the Anadolu Kültür Foundation, of which I was the Chairman, had close relations with European foundations and had carried out cultural projects related to Kurdish and Armenian issues. When the first Gezi trial resulted in my acquittal, yet another espionage charge was fabricated to keep me in prison until the acquittal had been overturned and a conviction that would please the government had been handed down. The justification for this was the allegation that I had been provoking minorities within the country under the guise of engaging in civil society activities. An allegation that, of course lacked any evidence.

■ **How did you feel when Turkey refused to implement the relevant ECtHR judgment? How did it feel to be a part of such a surreal and questionable trial, because it has already been a painful exercise itself to monitor this trial and the whole process from the outside, including the non-implementation of the ECtHR decision. How did you manage to stay calm and earnest while all this was happening?**

I would like to highlight a few points in order to explain the gravity of the situation. The 2019 ECtHR judgment not only ruled that there was no evidence to cause a reasonable suspicion that I had committed any crime, but also found a violation of Article 18 of the European Convention on Human Rights. The Court ruled that the intention in my arrest was to silence me as a human rights defender, which demonstrated that the arrest had political motives. After the first Gezi trial had resulted in my acquittal, the President had argued against this judgment, which eventually resulted in the fabrication a crime of espionage that went beyond the definitions in law, and my detention was continued. The government also informed the Council of Europe that this practice did not contradict the ECtHR judgment. These indicate a serious break with not only legal norms but with ethical principles as well.

I think that the message they sent was that they would punish people whose activities they deem undesirable in Turkey, even if their actions did not constitute a crime, and that the ECtHR and foreign institutions would not be allowed to interfere with this. It becomes a priority to defend the principles of law, especially in a context where the courts act not according to the law, but according to the definitions of crime offered by the government. I have endeavoured to fulfil such a public responsibility and to act accordingly.



The Gezi trial was designed as a show trial aimed at manipulating the people's perceptions

■ Both the politicians and the civil society raised objections against the judgement of the court in Turkey. What is your take on these reactions?

I find the reactions very positive of course. As I said before, the Gezi trial was designed as a show trial aimed at manipulating the people's perceptions. A heavy punishment was meted out against seven people, who have been well-recognised advocates of law and democracy, based on a surreal and ideologically loaded allegation that they had planned, instigated and led a popular movement which was willingly joined by millions of citizens in many cities. This alone exposed how the judiciary is being manipulated for political purposes and made it even more clear that this poses a danger for all the citizens. In my opinion, the plans were thwarted and this show trial worked in a way to establish the truth.

■ In an interview you gave after the judgement pronounced in April 2022, you made the following remarks: "What we see is a reckless determination. I believe this decision will be overturned in the Court of Cassation. But I don't think that it will happen before the elections." As a result of this trial that spanned quite a number of years now, you have first-hand experience, albeit as a defendant, about the judicial mechanism in Turkey. How do you think we should see the nature of judicial mechanism in Turkey?

The judiciary has been brought under the control of the government. There used to be violations of rights in Turkey, in that the courts did hand down judgments that restricted freedoms. These, however, were because the members of the judiciary had a certain mindset and perception regarding the threats and dangers that were ideologically framed. But now the judiciary has lost its independence, as pro-government lawyers are recruited, the high council that supervises the promotions and posts of the judges and prosecutors is brought under the control of the government, and the prosecutors have begun to take instructions from political actors. There are still true lawyers in the judicial panels, especially in higher judicial institutions, and certain decisions are made in accordance with the law. However, these judges remain in the minority, especially in political cases where the government is a party, but they are still able to annotate and highlight the unlawful practices with their dissenting votes.

I believe that Turkey's course will be altered towards the rule of law and a true democracy

■ Turkey's failure to implement the ECtHR judgment led to the adoption of an infringement procedure by the Council of Europe. What is your take on this process? Are you worried about Turkey's future?

Regarding the infringement procedure, what was extremely important was the second judgement of the ECtHR on July this year, where the Court evaluated the developments that followed its first judgement in 2019. The Court revealed that the actions of the government was in fact a circumvention of the law in an attempt to avoid implementing the ECtHR judgement. This judgement will be instructive and encouraging for people who defend legal norms in our country. Of course, it is quite worrying that our country drifts further away from the norms of law and democracy. However, I believe that this situation will change, and that after the upcoming elections, Turkey's course will be altered towards the rule of law and a true democracy.

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■ **What do you think is the contribution of international cultural cooperation projects to peace and democracy? What are your expectations from civil society and rights organizations around the world? What are your recommendations to the NGOs and cultural institutions established in Europe and work with Turkey?**

Humanity is faced with threats inherited from the past, such as war, discrimination and tyranny on the one hand, and with the inhumane living and working conditions created by today's world order - or rather, disorder - and neo-liberal policies on the other. As Edgar Morin emphasized in his book titled "Let's Change Lanes", I believe that we need a genuinely universalist humanism that will have an impact on politics and socioeconomic relations, and that will enable every person to feel as part of the global community in a way to develop her/his feelings of solidarity and responsibility. This can become a reality by means of a new understanding of politics, and by mental and emotional bridges that art and literature can build between people living in different parts of the world. In this context, I think PEN International's network and activities set an important example. NGOs, cultural institutions and rights organizations around the world can be the actors of such a renewal. Cultural institutions with strong networks supported by the European states can act as the pioneers of this mission. I think that to be effective, it would help if they create 'cultural hubs' and carry out common cultural programs in different cities away from the capitals with the participation of local organizations.

Gezi was a great popular movement that stood up against top-down policies and the restrictions of freedoms

Hopefully, once the political transformation that will expand freedoms and ensure the rule of law takes place in my country, cities such as İzmir, Gaziantep and Diyarbakır, like İstanbul, will, with the contribution of such collaborations, become hubs where cultural activities that promote humanism and democratic values will be booming, and act as centres with sound ties that connects them with cities from neighbouring countries.

■ **What are your favourite authors among the ones you read in prison? Who are you currently reading?**

A list of my favourite authors would take too much time to make. I also read the classics in prison. Reading the same works after many years is extremely exciting as it allows you to remember things you forgot and to better understand the author's intentions. Let me tell you that, however, it was here that I 'discovered' the works by Claudio Magris, Dag Solstad and Olga Tokarczuk, which I was not familiar with before, and I list them among the acquisitions of my experience in prison. When your questions arrived, I had just finished Orlando Figes' book titled 'Europeans', in which he vividly described the art, culture and dynamics of Europe in the 19th century, and begun reading Dag Solstad's 'Armand V'.

■ **Other Gezi defendants gave us inspiring interviews. They all talked about the spirit of Gezi as the invincible essence of democracy in Turkey. What does Gezi mean to you and what are your hopes for the future of democracy in Turkey?**

Gezi was a great popular movement that stood up against top-down policies and the restrictions of freedoms. Millions of our citizens participated in many cities. This movement did not have a headquarters, nor a brain, but it had a heart, and its heart was the Gezi Park, located at the centre of İstanbul, a Park on which the government attempted to build a shopping centre. Taking advantage of the proximity of my office, I often went to the park and had the opportunity to observe and chat with the young people who remained in the park to protect the trees and stayed there peacefully in solidarity. I was very impressed by their commitment to ethical values, their sense of responsibility, and the fraternal relations they managed to establish despite their differing views. I am hopeful about the future not least because I got to know those young people.

I would like to extend my greetings to you, the members and directors of PEN Norway, and to thank you for your greatly uplifting solidarity.

It has been my pleasure to answer the interesting questions you have sent. I hope I will contribute to a better understanding of the situation in my country.

Conclusion

Much has happened in Turkey since the Gezi Park protests in 2013. In 2016, the attempted coup d'état and the subsequent state of emergency regime, which lasted exactly two years, deeply affected many institutions in the country. During this time, many laws, including the Constitution, were amended. Thousands of judges and prosecutors were dismissed and replaced. Press and media organisations were shut down. Journalists, academics, rights defenders and politicians were subjected to criminal investigations and prosecutions. However, throughout all these years, the Gezi Park trial, which is also the subject of this booklet, has continued unchanged.

As PEN Norway, we followed the whole Gezi Park trial starting from the investigation phase. As you will see in this booklet, we have subjected the indictments, which constitute the essence of the trial, to a scientific study in legal terms. Additionally, we took part in all the hearings in person and we were in the courtroom as observers, but witnesses at the same time.

What have we detected over 5 years of trial monitoring?

During the trial monitoring the following violations of the right to a fair trial were observed and reported upon. Our recommendations would be to investigate the manner in which this case was heard in order to account for each of the below.

The fair trial violations cover a very wide area, affecting almost every single part of the judicial process. A summary of the violations we monitored includes:

1. Misuse of the pre-trial detention mechanism, which is defined as an exception under the Criminal Procedure Code, in respect of Osman Kavala and Yiğit Aksakoğlu
2. Preparation of the indictment over a long period of 16 months
3. An excessively long indictment of 657 pages containing many elements irrelevant to the subject matter of the proceedings and thus undermining the right of defence
4. Prosecutor who prepared indictment convicted of terror crimes
5. Absence of concrete evidence
6. Failure to share the so-called evidence in the case file with the defence

7. Failure to take into account the allegations that the person alleged to be the main witness of the case was mentally unstable
8. Hearing the person alleged to be the main witness of the case under a false name
9. Hearing of the person who is claimed to be the main witness in the file on the grounds of life safety without the participation of defence lawyers and without the opportunity to ask questions
10. Failure to hear witnesses called by the Defence
11. Removal of a member of parliament from the courtroom during the trial
12. Threat to remove defence lawyer
13. The fact that a number of judges in the judiciary are being investigated for alleged illegal wiretapping
14. Changing of judicial panel and removal of judges voting in favour of Kavala's release
15. Re-arrest of Kavala on the night of his release under bogus espionage charges
16. Merger of trial with an unassociated case
17. Convicting defendants with less evidence despite two previous acquittals of same defendants
18. Refusal, over three years, to heed judgements of European Court of Human Rights
19. Slow moving trial over 6 years
20. Interference in the judicial process of the President's speeches against defendants

The violations listed here, which are probably not exhaustive, point to a dangerous pattern of violations of the defendants' right to defence and right to a fair trial, while raising serious concerns about the rule of law in Turkey.

However, despite this picture of violations and the ECtHR judgements handed down during the trial, the defendants, all of whom were dedicated human rights defenders, were sentenced to long prison terms and arrested on the spot in the verdict hearing on 25 April 2022.

The arrest in front of our eyes in the courtroom of the defendants who are lawyers, architects, engineers, filmmakers, human rights defenders who had been present at the trial for years, shook us deeply. When this picture is considered together with Osman Kavala's five-year imprisonment, we believe that it will be understood how violations have reached an irreparable level.

What kind of work did we carry out?

First of all, we studied and followed the case. We contacted defence lawyers and gained permissions of individuals to campaign for them. We organized online meetings with one of the defense lawyers to better understand the legal process for building better support. We also worked together with our colleagues running the campaign "Defending Gezi" in Turkey. We monitored all hearings (in person with delegations and with local reporter) and reported on them both in English and Turkish.

We promoted the news and messages of defendants online. We wrote joint statements with other NGOs on important dates or following important judicial decisions. We also translated the Gezi

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Park indictment for the record and future study. We studied the indictment in 2020 with Kevin Dent QC, published the report bilingually and we also studied the second indictment against Kavala.

We were in the court room when the verdict was announced with a delegation from Norway and reported on the verdict. We advocated with the EU for Kavala's release.

Finally, we interviewed each Gezi Park defendant as soon as they were imprisoned. Each of them was already known to the international public through this trial and their defence in the trial. However, we felt it was important to interview them as people to understand what they believed, what the Gezi Park events meant to them as rights defenders and to hear their views on the future of democracy and social life in Turkey.

"PEN Norway will continue to advocate"

This booklet represents the output of 5 years of work. In an environment where very important human rights defenders are in prison on baseless allegations, it is an important responsibility to continue our work of monitoring and advocacy.

In May 2023, we will be holding an event in Berlin to discuss both the Gezi Park trial and the human rights defenders who are on trial as defendants in this case. We are also continuing our advocacy meetings with Foreign Ministries and other international authorities in different European countries.

PEN Norway believes that the Gezi Park trial has caused serious damage to the defendants themselves and to democracy and human rights in Turkey. In our view, the only way to reverse this damage is to immediately release the defendants and to drop to these unfounded allegations.

Society in Turkey deserves a democratic living space where freedom of expression, the rule of law, and the right to assembly and demonstration are respected. We hope that it will soon be possible to build a social and political life in which everyone's rights are respected.