

**INJUSTICE THAT
TRANSCENDS TIME
AND BORDERS:**

"Kavala's detention shall continue."

Turkey is going through extraordinary times when we encounter numerous cases that are nowhere near justice and cannot be associated with laws in any way. Practices that violate not only fundamental rights and the notion of justice, but also universal legal norms and even applicable laws and established judicial procedures have become ordinary.

The story of the ***Continuation of Osman Kavala's Detention*** entered its fifth year. It has a special place in the judicial chaos and flagrant violation of human rights in Turkey. It is a special case that embodies the politicization of the judiciary and its transformation into an apparatus of vengeance. It is an exemplary case that crosses borders in terms of its motive, merits, and consequences.

It is a very sad example of making an effort to create crimes for arbitrary punishments and failing to do even that. It illustrates how opinions, delusions, and presumptions can be considered sufficient and how the requirement of presenting evidence and the right to a fair trial can be ignored. It is an example of complete disregard for simple rules of logic, let alone fundamental rights and legal norms.

Osman Kavala has been detained for months without knowing what he was accused of. He was kept in prison for years with forced lawsuits based on indictments that have become the documents of shame. While criminal charges without any concrete evidence fell apart one after another, either new ones were fabricated or the insistence on systematic punishment with legal tricks continued. The court has issued another decision to ***continue Osman Kavala's detention*** each month for the past four and a half years.

Kavala has been charged under almost every article of the Criminal Code. He was tried, acquitted, and tried again for being the financier and organizer of the "Gezi Park Events" under Article 312 of the TCC. The allegation of "staging a coup" made under Article 309 also fell apart, and two release orders were issued. However, charges were not withdrawn. An attempt was made to bring espionage charges under Article 328. Even though no evidence could be fabricated for this charge, the slander continued.

The lack of valid evidence was recorded with the dissenting opinions of the members of local courts and the Constitutional Court and was established by the judgment of the ECtHR. Yet, the forcing continued. In particular, unforgettable violations and inexplicable oddities, such as the replacement of the panel of judges, witnesses who were hidden from the defense, and absurd consolidations, were observed.

Starting from the investigation phase, the process was filled with suspicions about those who prepared it, the allegations, and the practices. A worthless pile fabricated by dirty hands with systematic distortions was revalued and used as a ground for allegations. Mass trials were created in an attempt to impose collective punishments.

The persistent failure to execute the judgment of the ECtHR turned this legal issue into an international political crisis. An infringement procedure has been launched for the first time for Turkey and for the second time in the history of the European Commission. Despite bilateral extensions, proceedings were brought against Turkey on the charge of grave violation, which could result in expulsion from the Council of Europe.

This text is a brief summary of the punishment of Osman Kavala, his loved ones, and actually the whole country with completely political motives and instructions. When the chronological order below is followed, it becomes clear that the purpose of everything that had happened was to ***prolong Kavala's detention***.

OSMAN KAVALA
SAVUNMA YAPIYOR

GEZİ DAVASI
23.06.2019

Murat Başol



What happened?

18 October 2017

Osman Kavala was taken into custody at Atatürk Airport. On 1 November, he was ordered detention on the charges of “attempting to overthrow the constitutional order” and “attempting to overthrow the government.” Kavala has been detained for months without being brought before a prosecutor or judge.

16 November 2018

Some executives of Anadolu Kültür, founded by Kavala, were taken into custody. Members of the Taksim Solidarity, who were previously acquitted, were also summoned to testify. Civil society worker Yiğit Aksakoğlu was arrested.

19 February 2019

An indictment was issued 1,5 years after Kavala’s arrest. Admitted on 4 March, the indictment called for life imprisonment of Kavala and other defendants. Most of the so-called pieces of evidence were interception records, which did not include any crime.

22 May 2019

The Constitutional Court ruled that Osman Kavala’s detention “does not violate” his rights by a majority of votes, despite the dissenting opinion of its Reporter Judge. The requests for release on 24 June, 18 July, and 9 October 2019 were dismissed. The court ruled that **Kavala’s detention shall continue.**

10 December 2019

The European Court of Human Rights announced its judgment regarding Osman Kavala’s individual application, ruling for violation. The ECtHR held that Kavala had been detained on political grounds without reasonable doubt, and called for his immediate release.

24 December 2019

The Court disregarded the judgment of the ECtHR on the grounds that it was not “finalized.” The court ruled that **Kavala’s detention shall continue.**

28 January 2020

The reasoning that the judgment of the ECtHR was not finalized continued to be used. Dubious witnesses were heard in secret hearings, hidden from the defense counsel, and similar incidents took place. And the court ruled that **Kavala’s detention shall continue.**

6 February 2020

In his opinion letter, the prosecutor repeated the accusations in the indictment and demanded an aggravated life sentence for Osman Kavala, Mücella Yapıcı, and Yiğit Aksakoğlu.

18 February 2020

The Istanbul 30th Assize Court unanimously ruled for the acquittal of Osman Kavala and some of the defendants and separated the files of the defendants who were abroad. Kavala was re-arrested in another investigation on the same day before even leaving the Silivri Prison premises. The President of Turkey described the decision of acquittal as a “maneuver”.

19 February 2020

Osman Kavala was re-arrested in the investigation launched under Article 309 of the TCC. Later, the case was “fortified” by issuing another detention order under Article 328 of the TCC. Kavala was never even questioned or brought before the Court.

12 May 2020

Turkey’s appeal against the judgment of the ECtHR finding a violation was dismissed. It has been finalized that the detention constituted a violation of rights and was politically motivated.

25 May 2020

A request was submitted to the Committee of Ministers of the Council of Europe, stating that the judgment of the ECtHR on the release of Osman Kavala had not been executed.

3 September 2020

The Committee of Ministers of the Council of Europe called for the execution of the judgment of the ECtHR finding a violation in Kavala's application and the immediate release of Kavala.

24 September 2020

The Constitutional Court started to review Kavala's individual application, and five days later, it announced that the decision meeting on Kavala was postponed.

29 September 2020

The Istanbul Chief Public Prosecutor's Office submitted an indictment to the Istanbul 36th Assize Court, demanding the conviction of Kavala under Articles 309 and 328 of the TCC.

8 October 2020

The Istanbul 36th Assize Court admitted the new indictment. The court ruled that Osman ***Kavala's detention shall continue.***

3 December 2020

The Committee of Ministers of the Council of Europe issued an interim decision that the Constitutional Court should examine the file in accordance with the judgment of the ECtHR without further delay.

18 December 2020

In the hearing held in the Istanbul 36th Assize Court, the court ruled that Kavala's detention shall continue.

29 December 2020

Reviewing Kavala's individual application, the Constitutional Court ruled that his rights to personal liberty and security under Article 19 of the Constitution of Turkey were not violated. The decision was issued by a majority vote (8 to 7).

22 January 2021

The 3rd Penal Chamber of the Istanbul Appellate Court overturned the decision of acquittal issued in the Gezi Trial in 2020. It referred the case to the Istanbul 30th Assize Court to be reopened.

5 February 2021

In the hearing held in the 36th Assize Court, the Court ruled that **Kavala's detention shall continue** and that the file shall be consolidated with the Gezi Trial, which was heard in the Istanbul 30th Assize Court.

28 April 2021

The files that concern the defendants who were abroad and that were separated when the decision of acquittal was issued in 2020 were consolidated with the main Gezi Trial. The decision of acquittal in the Çarşı Trial was overturned by the Supreme Court.

21 May 2021

The Istanbul 30th Assize Court requested the Çarşı and Gezi files to consolidate them. And the court once again ruled that **Kavala's detention shall continue.**

9 June 2021

The Committee of Ministers of the Council of Europe announced that it would launch the infringement procedure unless the judgments of the ECtHR regarding Osman Kavala were executed, and Osman Kavala was released immediately.

15 June 2021

The 30th Assize Court requested the consent of the 13th Assize Court, where the Çarşı Trial was being heard, for the consolidation of the cases. And the court ruled that **Kavala's detention shall continue.**

12 July 2021

The 13th Assize Court did not give consent to the consolidation of the Gezi and Çarşı Trials. However, two weeks later, the chief judge of the 30th Assize Court, who had been temporarily appointed to the Court, gave the consent that he requested himself.

2 August 2021

The 30th Assize Court consolidated the Gezi and Çarşı Trials. And of course, the court ruled that *Kavala's detention shall continue.*

16 September 2021

The Committee of Ministers of the Council of Europe reiterated its warning that Kavala should be released immediately and that otherwise, the infringement procedure would be launched.

8 October 2021

In the hearing held in the Istanbul 13th Assize Court after the consolidation, the court ruled once again that Osman *Kavala's detention shall continue.*

18 October 2021

In a joint statement, the ambassadors of 10 countries, including 7 EU countries, the USA, Canada, and New Zealand, called for Kavala's immediate release.

21 October 2021

In response to the statement of the ambassadors, President Erdoğan said, "We cannot afford to host them in our country."

22 October 2021

Osman Kavala released a statement and said that he decided not to attend hearings as the President's accusations and insults against a defendant eliminated the possibility of a fair trial.

26 November 2021

In the second hearing held in the Istanbul 13th Assize Court after the consolidation, the court ruled once again that *Kavala's detention shall continue.*

2 December 2021

The Committee of Ministers of the Council of Europe launched the first phase of the infringement procedure for Turkey for its failure to release Kavala despite the judgment of the ECtHR.

2 February 2022

The Committee of Ministers of the Council of Europe admitted the second phase of the infringement procedure it launched against Turkey. President Erdoğan said, “We do not recognize those who do not recognize our courts.”

17 January 2022

In the third hearing held in the Istanbul 13th Assize Court after the consolidation of the Çarşı and Gezi Trials, the court ruled once again that **Kavala’s detention shall continue.**

21 February 2022

The Gezi and Çarşı Trials, which had been consolidated by replacing the chief judge, were separated once again. As pointed out by the attorneys as the main reason for the forced consolidation, the decision to **prolong Kavala’s detention** was repeated.

4 March 2022

Immediately after the separation of the cases, the prosecutor quickly submitted an opinion letter. In the 72-page opinion letter, baseless allegations were repeated, and an aggravated life sentence was demanded for Osman Kavala and Mücella Yapıcı.

21 March 2022

The prosecutor, who could not answer the questions of Kavala’s attorneys regarding the charge for which he demanded detention and the article under which the detention was demanded, did not break the routine. The court also ruled that **Kavala’s detention shall continue.** The hearing was adjourned, considering the time requested for defenses.

THESE TRIALS HAVE NO LEGITIMATE GROUND

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

During Kavala’s trial, the high ranking political authorities made public accusations. We also heard the President’s statements guiding the judiciary. Therefore, Kavala had to say that there was no need to legitimize the hearings by attending them. Politicians, members of the judiciary, and directed media spread misinformation. Legal requirements, procedural rules, and even court decisions went unenforced. The punishment process, which had no legitimacy or basis and was developed with clear political intentions, was shoved in our face. All that is necessary for the **continuation of Kavala’s detention** was done.

National and international court decisions clearly established that this lawsuit has no legal ground. The dissenting opinions of the members of

the Constitutional Court include clear examples. For instance, Zühtü Arslan, the President of the Constitutional Court, says, “not even a simple suspicion about the existence of a crime could be raised, let alone a strong indication.” Judge Engin Yıldırım stated that the fact that Kavala was released twice and placed in detention three times on charges based on the same fact resembled “a Kafkaesque legal spiral.”





Gezi Davası 18 Temmuz 11
Osman Kavala

WRONGFUL FROM THE FIRST TO THE LAST BUTTON

The series of lawsuits and investigations that have kept Osman Kavala in prison for many years has had a deliberate defect since the very beginning. There is an explicit confession on this matter in the Gezi Trial indictment, which eliminates the need to refer to any other source. “This investigation had been initiated and steered by individuals who were identified to be members of the FETO/PDY armed terrorist organization.” In line with the official definitions of the state, these lawsuits and investigations were based on documents prepared by a criminal organization to commit crimes on the pretext of “reevaluation.”

The prosecutors, law enforcement officers, and chiefs of police who launched the investigation on which the charges against Kavala were based were tried in various cases. Some of them were convicted, while others are still fugitives. The judges who ordered wiretapping and extended the authorizations for investigation are either FETO suspects or fugitives. The law enforcement officers who carried out interception and surveillance have been accused of being members of the same organization. In other words, those who provided materials for all the investigations and lawsuits against Kavala were proven to be conspirators.

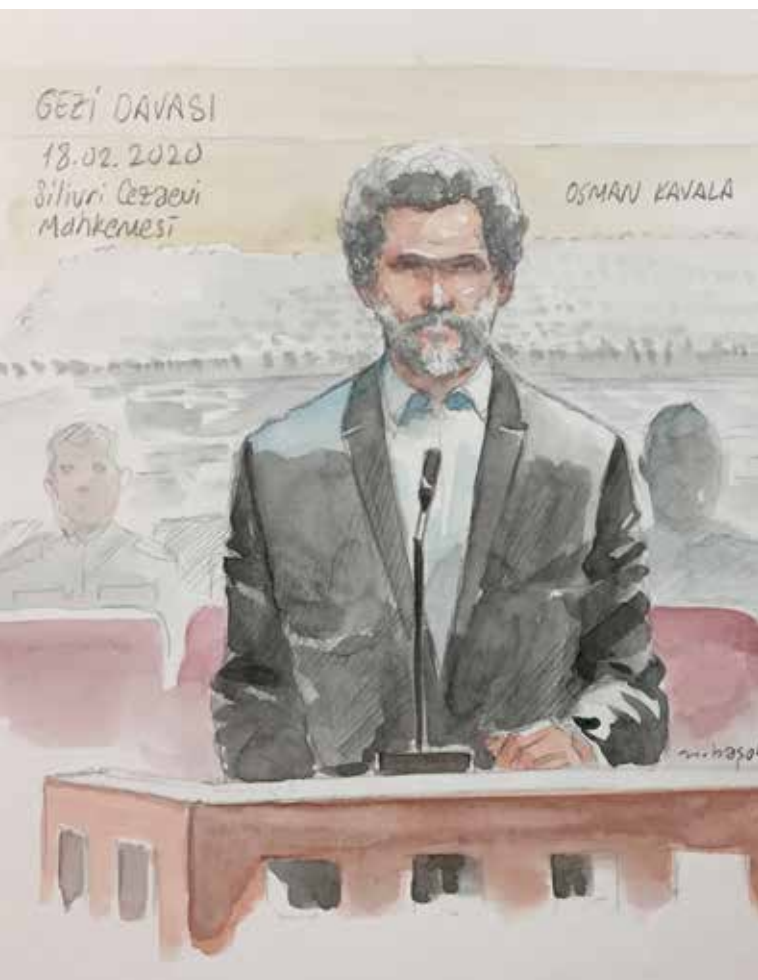
CRIMINAL OFFENSES AND EVIDENCE THAT CANNOT BE INVENTED

The so-called evidence for the allegations that were used to justify Kavala's imprisonment for years is filled with obvious illogicality and even absurdities. For instance, it was proven that Henri Barkey and Kavala did not meet and were not even in the same city on the dates when they allegedly had contact abroad. The simultaneous transmission of mobile phones via the same cell tower, which is located near Taksim and used by millions of people, was presented as evidence for

their contact. The excuse "We could not find any evidence, because intelligence agents leave no traces" was stated in indictments. However, not even a single sentence could be found to support the allegations in the pages of wiretap reports.

Documentaries that were never shot or that were shot and screened at various events, including Antalya Film Festival, but for which no legal action was taken, were presented as evidence for the charge of espionage brought against Kavala. It was found that the information transferred from the wiretap reports of some of the defendants to the indictment was incorrect, incomplete, or distorted. For instance, in the last hearing, it was found that Yiğit Aksakoğlu did not propose to invite the OTPOR member to Turkey but said the opposite.

Despite all the efforts forced, the attempt to forge a connection among the defendants themselves and between the defendants and the alleged crimes, for which the most severe sentences were demanded, has failed. For instance, in the consolidated trial, a member of Çarşı who was asked by the prosecutor about Kavala replied, "Which team does he play for?" MASAK documents indicated that there was no money traffic to support the allegation that Osman Kavala was the financier of the Gezi Park Events. The prosecutor's witness in the Gezi Trial, which had previously ended in acquittal, declared that he was mentally ill.



DISREGARD FOR LAWS, RULES, AND PROCEDURES

The unlawful and irrational process carried out to **prolong Osman Kavala's detention** ignored applicable laws and procedural rules. Various abnormalities were observed, including the distortion of official letters and records and the forgery of witness names. Hearings were hidden from the attorneys, and panels of judges were assigned or replaced for a single decision. In the decisions of reversal made on order, courts explicitly said, "If there is not sufficient evidence, find new evidence. If you cannot find it, search for it once again." Especially the process in the winter of 2020 is filled with exceptional examples of this legal scandal's disregard for rules.

Kavala was acquitted in the Gezi Trial on 18 February. The decision was described as a "maneuver" by President Erdoğan and as a "coup" by his supporters, and Kavala was not released. He was re-arrested in the July 15 investigation, in which he had been released a few months before. When this arrest was proven to be "baseless," another detention order was issued on the charge of espionage. Ten days later, he was released for the third time, this time in the "July 15 file." The judiciary, which was mobilized to **prolong Kavala's detention**, delivered an extraordinary performance by issuing a decision of acquittal, two detention orders, and two release orders on three separate charges within a month.



SOMETIMES MASS, SOMETIMES SINGLE TRIALS

The replacement of panels of judges depending on the desired decision and copy-and-paste indictments and opinion letters submitted without even correcting clerical errors were ordinary events in this process. However, the procedural nonsense did not end there. In order to **prolong Kavala's detention**, sometimes different lawsuits were filed in the same file, and sometimes unrelated cases were consolidated and then separated a few months later as they were found unrelated. The events that have taken place since the second decision of acquittal issued in the Gezi Trial in 2020 can only be found in nonsensical stories.



The decisions of acquittal issued in the Gezi and Çarşı Trials were overturned by the appellate court and the Supreme Court, respectively. The decisions of reversal told local courts what they should do and stated that the Çarşı, Gezi, 15 July, Kavala, and Barkey trials could be connected. Local courts issued decisions of consolidation to meet this demand. Even chief judges who did not give consent to the demands for consolidation were replaced. Furthermore, even the fact that it would seem very strange that the chief judge who was temporarily appointed to issue this decision was the chief of judge in the court which made the demand five weeks before was not taken into consideration.

A mass trial was created, including the Kavala, Barkey, Çarşı, Gezi, and July 15 files. The hearing that was scheduled before the decisions of consolidation was rescheduled to an earlier date, and in the new trial, where the scope and nature of the crime were replaced, the court hastily ruled that **Kavala's detention shall continue**. The Çarşı Trial, which was surprisingly consolidated with the Gezi Trial in order to prolong the process, was separated once again in February 2022 to meet the need for acceleration on the grounds that it was not related to the main trial. We saw members of the judiciary who could not decide on the connection between events that took place publicly eight years ago.



A LEGAL SCANDAL THAT GOES BEYOND BORDERS

The ***prolonged detention of Kavala***, who is kept in prison without a single piece of evidence for fabricated charges, which change frequently due to the indecision of the judiciary, has become an international issue. The ECtHR ruled that Kavala has been subjected to a severe violation of rights and punished for political reasons as a result of a trial in which Turkey made every effort to prolong the detention and made several excuses to avoid executing the judgment of the ECtHR. This judgment, which Turkey failed to execute, quickly turned into a diplomatic crisis.

At the end of 2020, the Committee of Ministers of the Council of Europe warned Turkey about the decisions to ***prolong Kavala's detention*** despite the judgment of the ECtHR; however, no concrete steps were taken for a year. In October 2021, the ambassadors of the USA, Germany, Denmark, Finland, France, the Netherlands, Sweden, Canada, Norway, and New Zealand to Ankara made a joint statement

demanding that Kavala be released immediately and that the process not be prolonged by fabricating new lawsuits. Erdoğan threatened the ambassadors by implying deportation and once again expressed his “opinions” on the case. Kavala announced that it would be unnecessary for him to attend hearings.

On 2 December 2021, the Committee of Ministers of the Council of Europe launched the first phase of the infringement procedure. Turkey responded by ***prolonging Kavala's detention***. The second phase of the procedure began two months later, on 2 February 2022, and the file was referred to the ECtHR for a judgment on Turkey's infringement. In the event that the ECtHR rules that the judgment is not executed, it may impose a number of sanctions ranging from restricting certain rights in the Council of Europe to suspending its membership. The procedure, which has only been carried out for Azerbaijan before, is now being carried out for Turkey.

PUT AN END TO THIS

This long exemplary story, which was written to *prolong Kavala's detention*, made clear the intention behind it at every stage from the very beginning. It has been established by international court decisions that the process was based on a clear political punitive intent. The allegations and lawsuits brought against Kavala are completely devoid of any legal basis and are not supported by any evidence, as they were at the beginning. This result does not change regardless of whether the cases are consolidated or separated, whether the lawsuits are filed again by changing the definition of the crime, and whether the President constantly expressed his opinion.

The next hearing in the trial where all the charges brought against Kavala have been consolidated will be held on 22 April 2022. The events that we have summarized above in chronological order indicate that it is impossible and perhaps unnecessary to make legal comments on the result of this process, which has not been lawful at any stage. The opinion letter submitted by the prosecutor before the last hearing shows that no progress has been achieved since the very beginning. It will not surprise anyone that the current needs of the will that has initiated it and the intention behind it are decisive.

This injustice, which transcends time and borders, should no longer be shaped according to the needs of the architects of the process. The misery inflicted on Kavala and the shame brought on this country must be stopped immediately. It must be stopped as it is a disgrace to Turkey's judicial history and foreign relations record. It must be stopped so that every person living in this country can hope for a fairer and freer future. Kavala must be released immediately, and all the investigations that were unlawful right from the beginning must be cleared off, along with their consequences.

Let's end this article with a quote by Osman Kavala, who was optimistic enough to say "Gracias a la vida" in his letter to Açık Radyo in the third year of his detention despite everything. After dozens of decisions to *prolong his detention*, on 2 November 2021, he said, *"After losing four years of my life and becoming an 'problem of the country,' the only aspect I can find solace in is the possibility that the process I experienced could contribute to confronting the crucial problems in the judiciary of Turkey, thus, those who will be brought to justice in the future could receive a fairer treatment."*