

20 February 2020

STATEMENT

Turkey - BHRC condemns the continued detention and harassment of Osman Kavala in the wake of new investigation

The Bar Human Rights Committee of England and Wales (“BHRC”) strongly condemns the arrest and detention of Osman Kavala in respect of a new criminal investigation, following his acquittal in the baseless ‘Gezi Park’ trial, thereby extending the 928 days he has already spent in detention. BHRC calls upon the authorities to release Osman Kavala immediately. It further calls upon the Turkish authorities to cease instigating politically-motivated investigations in order to harass human rights defenders and civil society activists.

The Gezi Park acquittals

On 18 February 2020 at the 30th Serious Crime Court at Silivri near Istanbul, Osman Kavala and 8 other defendants were acquitted of all charges as the Court held that there was no evidence in relation to allegations that they had plotted to overthrow the Turkish state by force and violence during the protests centred around Gezi Park in Istanbul in 2013.

BHRC has monitored this trial since the first hearing on 24 June 2019. Alongside many other national and international observers, it has consistently stated that the charges, based upon a sprawling 657-page indictment, were nonsensical and lacked any proper evidential foundation. Indeed, the European Court of Human Rights (ECHR) ruled on 10 December 2019 in the case of **Kavala v Turkey (28749/18)** that the state had violated Articles 5(1), 5(4) and 18 and had brought the charges for the purpose of deterring and silencing human-rights defenders in Turkey.

Although BHRC welcomes the verdicts in the trial, the damage that this case has caused to confidence in the rule of law in Turkey is matched only by the harm it will have inflicted on the Defendants, their families, supporters, civil society and human rights groups. Various Defendants spent periods in detention in respect of a wholly

meritless prosecution and, indeed, Osman Kavala has now spent 930 days in custody, prolonged for 8 weeks without justification after the ECHR had ruled that he should be released immediately. Co-defendant Yiğit Aksakoğlu was detained for 7 months following his arrest on 17 November 2018 until his release on bail in June 2019.

BHRC has previously noted, that:

- The 657-page indictment presented no logical evidential basis for the charges;
- A key witness had been heard in private in the absence of the defendants;
- None of the witnesses brought by the prosecution could offer any evidence of the defendants' involvement in organising an attempt to overthrow the state by force;
- A police officer who had been jailed for unlawfully kicking to death a Gezi protestor had been joined to the proceedings as a complainant;
- The Court refused for 8 weeks to implement a decision of ECHR that Osman Kavala should be released immediately.

Likewise, the hearing on 18 February 2020 represented a cruel, degrading and pointless farce. Notwithstanding that the Court had almost certainly already decided to acquit the Defendants (the judges retired for 10 minutes before pronouncing the verdicts) this was not communicated or indicated until the very last moment. This meant that the Defendants and their representatives were obliged to argue for a number of petitions seeking to extend the trial to allow for proper examination of the evidence. Moreover, the Defendants were called upon to make their closing statements in the knowledge that they could be convicted of charges in which the prosecution were seeking sentences of up to 3000-years imprisonment. Likewise, the defence lawyers were prevented from making closing submissions, prompting protests by them which led to the extraordinary position of defence lawyers being surrounded by a phalanx of security staff and soldiers in an attempt to remove some of them. Even the appearance of a fair trial appears to have been long discarded.

Announcement by the Public Prosecutor

Although there was, briefly, jubilation at the verdicts by the large numbers of members of public who had attended the hearing, this was quickly overshadowed by the announcement by the Public Prosecutor later that evening that they would both seek to appeal against the acquittals and that they were opening a new criminal investigation Osman Kavala in relation to allegations under Article 309 of the Turkish Penal Code of attempting to overthrow the constitutional order through violence and force in relation to the attempted coup in 2016. Following this move by the prosecution, the Court has ruled that Osman Kavala be held in detention in respect of the new allegations.

BHRC strongly condemns this development and Osman Kavala's continued detention and notes:

- This action extends the 929 days of detention that Osman Kavala has already suffered in relation to charges held by the Court to be based on no evidence;
- There is no obvious reason why any investigation into suspected involvement in the attempted coup back in 2016 could not have commenced at an earlier stage. The timing of the bringing of a 'fresh' investigation, a few hours after the acquittal, strongly suggests state manipulation of prosecutorial power in order to prolong the detention of a prominent human-rights and civic society activist. It has been reported that President Erdoğan has told reporters that the new arrest must be respected, describing the acquittal as a "manoeuvre" by "Soros-like people", and that the judges "dared to acquit [Kavala]";
- Given that the 'Gezi Park' proceedings had already been ruled by ECHR to be brought for the illegitimate purpose of silencing and deterring human-rights defenders in exercising their Convention rights, this move by the prosecution creates a strong appearance of political manipulation of legal processes. Indeed, it constitutes a further violation of Article 18 in that, yet again, criminal proceedings are being brought for political purposes.
- This action fits in with a deplorable pattern of behaviour that appears to be becoming prevalent, for example in the cases of Ahmet Altan and Selahattin Demirtaş, which BHRC has also been monitoring, in which authorities are choosing to instigate new or further proceedings in order to perpetuate harassment of individuals in the face of court rulings adverse to a preferred state position.
- Such pattern wholly undermines and contradicts Turkey's recent representations to the United Nations during the Universal Periodic Review that it was committed to strengthening prosecutorial independence and observation of the rule of law.

Investigation into the Gezi Park judges

In a further worrying development, it was announced yesterday that the Turkish Council of Judges and Prosecutors has initiated a disciplinary investigation concerning the panel of judges who acquitted Defendants in the Gezi Park trial. BHRC strongly condemns any such interference in the impartiality of the judiciary and calls for any investigation to be halted. The move against the judges could also potentially be a way of intimidating judges dealing with Kavala's new case.

ENDS.

NOTES FOR EDITORS

1. For an interview with our spokesperson, please contact Josie Fathers, Project Coordinator on coordination@barhumanrights.org.uk or +44 (0)7854 197862
2. For more information on the Bar Human Rights Committee (BHRC), visit our website at <http://www.barhumanrights.org.uk>
3. The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council.