



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND & WALES

INTERIM TRIAL OBSERVATION REPORT

The “Gezi Park” Trial / Osman Kavala

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About the Bar Human Rights Committee

The Bar Human Rights Committee (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 comprised of barristers practising 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 coordinator.

BHRC aims to:

- uphold the rule of law and internationally recognised human rights norms and standards;
- support and protect practicing lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- further interest in and knowledge of human rights and the laws relating to human rights, both within and outside the legal profession;
- support and co-operate with other organisations and individuals working for the promotion and protection of human rights; and

As part of its mandate, BHRC undertakes legal observation missions to monitor proceedings where there are concerns as to the proper functioning of due process and fair trial rights. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer and critic.

The “Gezi Park” trial (Osman Kavala)

Introduction

1. The Bar Human Rights Committee of England and Wales (BHRC) has continued to observe and monitor the “Gezi Park” trial of sixteen leading civil society individuals in Turkey, including Osman Kavala and Yiğit Aksakoğlu. The trial was in session for a day on **24 December 2019** at a court situated in Silivri Prison outside of Istanbul. Mr Kavala remains the only defendant still in custody and has now been detained for over 26 months.
2. It is a matter of the highest concern that Mr Kavala continues to be detained in respect of an indictment which is gravely flawed and in defiance of an unequivocal decision by the European Court of Human Rights (ECHR) on **10 December 2019** calling for his immediate release from custody. Instead, it is evident that Turkey is seeking to double-down on a meritless prosecution by adding new complainants to the case.
3. On behalf of BHRC, Kevin Dent QC, attended the hearing on 24 December 2019 supported by Article 19. We will continue to follow and monitor the trial this week alongside our partner, Article 19, and other international observers.

The 10 December 2019 ECHR decision

4. The backdrop to the 24 December 2019 hearing was the ECHR ruling on 10 December 2019 in the case of **Kavala v. Turkey (application no. 28749/18)**. The ECHR held that there had been a violation of Article 5 § 1, Article 5 § 4 and Article 18. It held that Turkey was to take every measure to put an end to the Mr Kavala’s detention and to secure his **immediate** release.
5. The ECHR ruling was critical of Turkey’s entire approach to the case, finding it established beyond reasonable doubt that the prosecution is being pursued for the ulterior purpose of silencing Mr Kavala and, with him, all human-rights defenders in Turkey. The ECHR judgment is explained and analysed more fully in an **annex** to this report.
6. **The ECHR stated in the clearest terms that, having regard to the particular circumstances of the case and the grounds on which it had based its findings**

of a violation, the Turkish Government was to take every measure to put an end to the Mr Kavala's detention and to secure his immediate release.

The 24 December 2019 hearing

1. Although on 24 December 2019 the Court was presided over by the same panel of three judges as on the previous hearing, concerns remain, however, about interference with the allocation of judges for the case. At the hearing on 8 October 2019, for instance, it was of note that the previous presiding judge had been replaced.
2. On 24 December 2019, the hearing for the day began without any acknowledgment of the 10 December 2019 decision by the ECHR. Instead, two witnesses were called and questioned.

Prosecution witnesses

3. Firstly, **Ercan Orhan Aydın**, the Chief of Security Branch, gave evidence confirming that he had not seen Osman Kavala present at Gezi Park during the protests and was unaware of his role, if any, in the organisation of the protests. He could not say that any of the Defendants carried out a violent act and had not seen Mr Kavala involved in any violence against police. He had not seen any of Defendants making press statements provoking the crowd to carry out violent acts.
4. Afterwards, **Hasan Gül** from the İstanbul Security Branch was called to the witness stand and confirmed he knew Osman Kavala's name not from any actions, but from general knowledge. He was aware of Mr Kavala's involvement in NGOs but did not know where he was during the Gezi Park protests. He had not seen Mr Kavala involved in any violent action.
5. BHRC observes that neither of these key witnesses were able to provide any evidence to support the prosecution contention that the Defendants were involved in organising the either the protests or any violent acts. On the contrary, both stated that they were unaware of Mr Kavala's or the other Defendants' roles, if any, in the protests.
6. The testimony of these witness only reinforces BHRC's view that there is

simply no evidence to support the prosecution's case that Mr Kavala and the other Defendants had attempted to overthrow the Government and constitutional order, through force and violence. The testimony of Mr Aydin and Mr Gul also only strengthens the correctness of the ECHR's assessment that the facts do not support even reasonable suspicion that Mr Kavala had committed an offence.

7. After these witnesses had given evidence, by way of response the Defendants took turns to address the Court with their observations on the testimony given by the two officers.
8. Osman Kavala said, "The witnesses have provided no information indicating that I took part in any act of violence, that I provoked any such act, or that I was a director of the Gezi Events."
9. Other Defendants stated that these witnesses' evidence showed that the indictment is groundless, that the activities they were involved with were an exercise of their basic rights and that the charges should be dropped.

Defence submissions

10. Emphasizing that his request for release had been rejected 26 times, Mr Kavala also submitted that the indictment did not disclose any evidence other than his involvement in non-violent lawful activity.
11. Mr Kavala's lawyers stated that the ECHR decision of 10 December 2019 had already been translated into Turkish, and approved by a Notary. In the light of the ECHR decision, they submitted that Mr Kavala should be released immediately. In their submissions, they relied extensively on the ECHR decision and its view that the prosecution was groundless. They noted that Turkey's representative judge sitting on the ECHR had been in agreement with the ruling that there had been a violation in respect of Articles 5 § 1 and 5 § 4.
12. Defence lawyers stated that, in light of the ruling under Article 18, that the prosecution was being pursued for reasons outside of legitimate Convention reasons. If the trial were to continue, therefore, it would now be a political trial and thereafter would be conducted accordingly.

Ruling on Mr Kavala's detention

13. Following a short adjournment, the Court then announced its decision. It stated that the Court was bound by the ECHR ruling, that it would be implemented but that it had not yet been approved by the Ministry of Justice. The Court ruled that Mr Kavala would remain in detention until such time as the decision had been approved.
14. In BHRC's view, the decision of the ECHR had clearly and unequivocally stated that Mr Kavala should be released *immediately*. It is important that this decision is carried out forthwith, else this will further erode confidence in the observance of rule of law in Turkey.

Worrying developments

1. In addition, at the 24 December 2019 hearing there were other developments in the case that add to BHRC's grave concerns about these proceedings.
2. Despite objections from the lawyers for the Defendants, the Court acceded to the request of the Ministry of Treasury and police officer Mevlüt Saldoğan to join the proceedings as additional complainants in the case. Mr Saldoğan is known as one of the police officers involved in the death of protestor Ali İsmail Korkmaz during the wider Gezi Park protests in the city of Eskişehir on 10 July 2013.
3. The indictment was originally brought in the names of over 300 complainants, including the Turkish Prime Minister Tayyip Erdogan and his entire cabinet. In the context of a public prosecution, the BHRC can perceive no additional legitimate legal objective their inclusion as complainants is aimed at.
4. Instead, their addition at this stage strongly supports other factors indicating that the criminal proceedings brought against these 16 Defendants have been brought for political rather than legitimate legal reasons.
5. There were further concerns about the Court's indication that the next witness to give evidence, Murat Pabuc would be doing so in private and in the absence of the Defendants and their lawyers. Mr Pabuc is understood to be the original

informant in the case. The ostensible reason given for his testimony being taken in private was because he suffers from some psychological problems. This gives rise to clear concerns as to whether this represents a violation of basic Article 6 rights to a fair and public hearing.

Commentary

6. Mr Kavala has still not been released notwithstanding that it is now over six weeks since the ECHR's unequivocal ruling on 10 December 2019. BHRC considers that the continued detention of Mr Kavala is arbitrary, unjustified and in clear, unacceptable defiance of the European Court of Human Rights.
7. Moreover, Mr Kavala's continued detention and these proceedings must be viewed in the context of a worsening situation for human rights defenders and civil society in Turkey since the attempted coup in 2016.
8. BHRC has previously stated that the extraordinary and obviously flawed indictment, and the length of Mr Kavala's detention all lend the clear impression that the proceedings are being abused in violation of Article 18 ECHR in conjunction with Article 5 and condemns the use of terror proceedings and detention as reprisals against human rights defenders, whether they be lawyers, journalists, judges or civil society.
9. The continuation of this trial in the manner that we have described, the failure to release Mr Kavala from detention and the prosecution's call for aggravated life sentences underline and heighten our assessment that these criminal proceedings are being used in a retaliatory and intimidatory manner.
10. The attempt to cast peaceful Gezi Park protestors within the net of violent terrorism, retrospectively and without recourse to the evidential threshold required of the Prosecutor, has a chilling effect on the present and future adherence to international laws and standards, as well as for civil society in Turkey. So, too, does the failure to heed and follow the judgment of the European Court of Human Rights.
11. BHRC considers that there is no proper basis for Mr Kavala to remain in detention and it calls for him to be released immediately. In addition, it calls upon the Turkish authorities to drop what is plainly a meritless prosecution

and one which threatens to further erode the application of the rule of law in that country.

Annex

Analysis of Kavala v. Turkey (application no. 28749/18)

Article 5 § 1

1. The ECHR reiterated that a person could be detained under Article 5 § 1 (c) only for the purpose of bringing him or her before the competent legal authority on *reasonable suspicion* of having committed an offence.
2. The ECHR observed that Mr Kavala had been placed in detention on claimed “strong suspicion” that he had attempted to overthrow the Government and constitutional order, through force and violence. The ECHR noted, however, that during the interviews with Mr Kavala during police custody, no questions had been put to Mr Kavala about his involvement in committing the acts of violence which had occurred during those events. Moreover, in ECHR’s view there was no evidence in the case file indicating that he had used force or violence, had instigated or led the violent acts in question or had provided support for such criminal conduct.
3. The ECHR stated that the acts attributed to Mr Kavala were either legal activities or activities which were clearly related to the exercise of a Convention right; in any event, they were non-violent activities. The ECHR concluded that, in the absence of facts, information or evidence showing that he had been involved in criminal activity, Mr Kavala could not reasonably have been suspected of having committed the offence of attempting to overthrow the Government by force or violence. Turkey were therefore unable to demonstrate that Mr Kavala’s detention was justified by reasonable suspicions based on an objective assessment of the acts. The ECHR therefore concluded that there had been a violation of Article 5 § 1 on account of the lack of reasonable suspicion that Mr Kavala had committed an offence.

Article 5 § 4

4. On 29 December 2017 Mr Kavala lodged an individual application with the Turkish Constitutional Court challenging the lawfulness of his detention. Over one year and four months had elapsed between the lodging of the application and the date that Court published its deliberations. The ECHR reiterated that

where an individual's personal liberty was at stake, it applied very strict criteria in assessing the State's compliance with the requirement of speedy review of the lawfulness of detention. For sixteen months after being placed in detention, Mr Kavala had been detained without having been charged. The EHCR observed that, as the Commissioner for Human Rights pointed out, the extension of Mr Kavala's detention in this way could have a dissuasive effect on the non-governmental organisations whose activities were related to matters of public interest. The ECHR concluded that the proceedings by which the Turkish Constitutional Court had ruled on the lawfulness of his pre-trial detention could not be considered compatible with the "speediness" requirement of Article 5 § 4 and, therefore, there had been a violation of the Article.

Article 18

5. In considering whether the prosecution was being brought in pursuit of non-legitimate law enforcement aims, the ECHR reiterated its conclusion that the measures against the Mr Kavala had not been justified by reasonable suspicions based on an objective assessment of the alleged acts. Rather, from the outset, the investigating authorities had not been primarily interested in Mr Kavala's involvement in the public disorder connected to the Gezi Park events. During the police interview, Mr Kavala had been asked many questions which had no connection with these events. Equally, some of the questions put to him had concerned his meetings with representatives of foreign countries, his telephone conversations with academics, journalists, NGO representatives, or the visit of an EU Turkey Civic Commission delegation.
6. The ECHR also noted that:
 - The 657-page bill of indictment did not specify clearly the facts or criminal actions on which Mr Kavala's criminal liability in the Gezi Park events had been based;
 - There was nothing in the case file to indicate that the prosecuting authorities had had objective information in their possession enabling them to suspect the Mr Kavala in good faith at the time of the Gezi events;

- The prosecution documents referred to numerous completely lawful acts that were related to the exercise of a Convention right and had been carried out in cooperation with Council of Europe bodies or international institutions;
 - Those documents also referred to ordinary and legitimate activities on the part of a human-rights defender and the leader of an NGO, such as conducting a campaign to prohibit the sale of tear gas to Turkey or supporting individual applications;
 - Mr Kavala had been arrested more than four years after the Gezi events and more than a year after the attempted coup on charges related to these, much earlier, events;
 - The charges had been brought following two speeches given by the President of the Turkish Republic in which Mr Kavala's name had been cited. There was a correlation between, on the one hand, the accusations made openly by the President and, on the other, the wording of the charges in the bill of indictment;
 - Those elements corroborated Mr Kavala's argument that his initial and continued detention had pursued an ulterior purpose, namely to reduce him to silence as a human-rights defender;
 - Moreover, the fact that the bill of indictment referred to the activities of NGOs and their financing by legal means, without however indicating its relevance also support that assertion.
7. The ECHR also referred to the concerns expressed by the Commissioner for Human Rights and the third-party interveners, who considered that Mr Kavala's detention was part of a wider campaign of repression of human-rights defenders in Turkey.
8. Consequently, the ECHR found it 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 Mr Kavala to silence. Further, it considered that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders. It found that

the restriction of Mr Kavala's liberty had been applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 § 1 (c) of the Convention. There had therefore been a breach of Article 18 of the Convention, taken in conjunction with Article 5 § 1.