



Osman Kavala Must Be Released Immediately

28 February 2020

Osman Kavala, who spent 840 days behind bars based on groundless accusations and unlawful practices, was released following his acquittal in the Gezi Park trial on 18 February 2020. However, he was promptly re-arrested on charges related to the failed coup attempt of July 15 despite this release order.

Osman Kavala's re-arrest is an example of maltreatment, as defined by the Council of Europe Commissioner for Human Rights Dunja Mijatović as well. The punitive decision of re-arrest, which constitutes violations to both national and international law, should be revoked and Osman Kavala must be released immediately.

When Osman Kavala was taken into police custody on 18 October 2017, this custody order was not issued solely based on the Gezi investigation. The file opened against Kavala at that time also included an investigation in connection with "the July 15 coup attempt" under Article 309 of Turkish Penal Code (TPC). In this investigation, an ex-officio release order was issued per Article 309 on 11 October 2019. An indictment has not been prepared thus far although this investigation was launched more than two years ago.

Existing legislation orders that the duration of the detainment cannot exceed two years if there is no indictment. Osman Kavala's investigation file based on Article 309 of TPC exceeded two years as of 25 February 2020. Therefore, Kavala's re-arrest violates the Law no. 7188 on Amending the Code of Criminal Procedure and Certain Laws, which took effect on 24 October 2019. This new regulation stipulates that a suspect cannot be detained for more than two years without the presence of a lawsuit against them.

Following his custody on 18 February 2020, Osman Kavala was referred to the Criminal Peace Judgeship with the prosecutor demanding his arrest without conducting a new interrogation at the police station or the Prosecutor's office. This clearly shows that Kavala's re-arrest was not grounded on any evidence or intelligence revealed during the last 28 months.

Hence, there is a clear **legal obligation** to release Osman Kavala in relation to this file on 25 February 2020. Petitions from lawyers or the initiative of judges and prosecutors are not even needed for this release order, as the legislation already stipulates that Kavala should be released.

This arrest order against Osman Kavala and his continued detention have no legal ground whatsoever. This arrest order is the result of a politically motivated determination to keep Osman Kavala behind bars, and a willingness to abuse the law as a means to this end.

President Recep Tayyip Erdoğan's statement, "They attempted to acquit him with a maneuver," that came while Osman Kavala was under custody has proved that Kavala's re-arrest has a political motive. This is an overt repetition of Osman Kavala's arrest for "political reasons and without reasonable suspicion", a practice which the European Court of Human Rights (ECtHR) decision dated 10 December 2019 defines as a violation of Article 18 of the European Convention on Human Rights.

The ECtHR also examined the allegation that Kavala "attempted to destroy the constitutional order of the Republic of Turkey" under Article 309 of the TPC, which is used to justify Kavala's re-arrest, in its judgement. Therefore, ECtHR's call for "immediate release" refers not only to the Gezi Trial and encompasses the 15 July investigation as well.

We, human rights defenders, demand Osman Kavala's immediate release. Turkey must abide by the national legislation and the ECtHR judgment; stop manipulating the law as a tool for harassment and revenge; and ensure the rule of law prevails for all citizens including Osman Kavala.

Solidarity Network for Human Rights Defenders - Turkey

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