UN Forum on Human Rights, Democracy and Rule of Law

"Equal access to justice for all: a necessary element of democracy, rule of law and human rights protection"

Side Event: Concept Note

Duration: 1 hour

The Erosion of the Rule of Law, Democracy and Institutional Checks and Balances – A Case Study

Four years ago, activist and philanthropist Osman Kavala was detained on charges connected to the Gezi Park protests. The Gezi Park protests began in May 2013 as an effort by a group of environmentalists to save a park in central Istanbul from being rezoned, but soon grew into nationwide demonstrations. Police quelled the protest in Taksim Square with the use of tear gas and water cannons. After having been acquitted of all charges in relation to the Gezi Park case, he was immediately rearrested on a range of new charges for his alleged involvement in the 2016 coup attempt.

Mr Kavala, who’s trial is ongoing before Istanbul 30th Assize Court along with 15 other defendants, has been held in pre-trial detention for four years on terrorism charges. However, the Turkish Penal Code contains neither the definition of what constitutes a terrorist organisation and armed groups nor the offense of membership. The lack of legal definitions and criteria of what constitutes an armed terrorist organisation, and the offense of membership in the armed terrorist organisation, makes these articles prone to arbitrary application and abuse. Vague formulation of the criminal provisions on the security of the state and terrorism and their overly broad interpretation by Turkish judges and prosecutors make all critics, particularly lawyers and human rights defenders, potential victim of judicial harassment. According to the Council of Europe, Turkey has the largest population of inmates convicted for terrorism-related offences, with 29,827 inmates in Turkish prisons out of a total of 30,524 in the Council of Europe's member states.

The UN has previously expressed great concern over the extensive use of anti-terrorism laws to silence Turkish human rights defenders and disrupt their legitimate work defending human rights, stating that the case of Kavala is ‘emblematic of this pattern of judicial harassment against human rights defenders in Turkey’.

Recently, the European Court of Human Rights held that the detention of Mr. Kavala, in connection with his role in the Gezi Park protests of 2013, violated the right to liberty (Article 5.1) and the right to a speedy judicial review of detention (Article 5.4) under the European Convention on Human Rights (ECHR). The Court also found that his detention involves a restriction on rights for an improper purpose (Article 18). As a consequence of these findings, the Court specifically held that ‘the government must take every measure to put an end to the applicant’s detention and to secure his immediate release’ and the Turkish government has a legal obligation to comply with the judgment of the European Court of Human Rights (ECtHR). The failure to implement the ECtHR’s ruling in this case constitutes a serious breach requiring exceptional measures to be triggered. Mr Kavala remains detained despite six decisions and one interim resolution by the Council of Europe Committee of Ministers defining his detention as arbitrary, which
also strongly urged the authorities to ensure the applicant’s immediate release or face infringement proceedings.

Infringement proceedings are provided for under Article 46/4 of the European Convention on Human Rights (ECHR). Their commencement requires the vote of two-thirds of the Committee of Ministers. Once the process is triggered, the case is referred back to the European Court of Human Rights for a further opinion on the legally binding obligation to comply. If the Court confirms that Turkey has failed to implement the ruling, the Committee of Ministers may then take additional measures, including ultimately suspending Turkey’s voting rights or membership of the Council of Europe.

**Topics of discussion and Event objectives**

The side event aims to stimulate a dialogue on the case of Kavala to date, identifying key obstacles to justice and the chilling effect on civil society and the broader impact of this emblematic case on the rule of law as a whole. Speakers will contextualize the role of the shrinking civic space in Turkey as well as discuss pathways to justice for Kavala. The moderator, Baroness Helena Kennedy QC, will also speak to the IBAHRI’s trial observation in this case.

**Tentative speaker profiles**

- **Baroness Helena Kennedy QC (Moderator, UK)**
  Director, International Bar Association’s Human Rights Institute
- **Ms. Dunja Mijatović, Council of Europe Commissioner for Human Rights (Bosnia and Herzegovina)**
- **Ms. Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders (Ireland)**
- **Representative from the International Commission of Jurists (ICJ)**
- **Representative from Turkish CSO or Turkish Lawyer (Turkey)**

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