

The second session of the Gezi case, where Osman Kavala is the only suspect in custody, begins 18th July in Silivri. The defense attorneys have given statements in the second hearing of the Gezi Trial. The court has ruled that the arrest of Osman Kavala, the only defendant behind bars, to continue.

On this occasion, it is necessary to discuss the unanimous decision of the Constitutional Court on 22 May, which did not see any violation during the arrest of Kavala. The President Prof. Dr. Zühtü Arslan and their deputies including Engin Yıldırım and Hasan Tahsin Gökcan, were dissenting against the arrest of Osman Kavala.

The main accusation against Osman Kavala is the claim that he was the director and organizer of the Gezi events, which the prosecutor described as an uprising events to eliminate the State and the government. The majority of the 10 members of the Court found that the arrest of Kavala, who was charged with this act, did not constitute a legal and measured violation of his right, while the group of five, including the president, considered that his "right to personal liberty and security had been violated".

An important aspect of Prof. Arslan's negative vote is that he is not categorically criticizing gezi events and describing all of these actions that spread in Turkey as well as peaceful demonstrations, violent and also some of them resulted in the death and the events that led to the injury occurred. The President recalls that the court also assessed the individual applications related to Gezi from this perspective, whether the meetings attended by the applicants were of a peaceful nature and whether the applicant had turned to violence even if the events evolved into violence.

At this point, the whole question arises as to whether there is a relationship between Kavala and violent acts. The majority of the Court considers that Kavala has evolved into violence in the process and is in a position to predict its consequences. The majority of the members believe that it is not arbitrary and unfounded that Kavala's activities are regarded as a strong symptom in order to be held responsible for violent incidents and to be arrested.

Arslan, on the other hand, thinks that the determination made here does not reveal a connection between the violence and Kavala: The fact that the applicant had participated and supported the Gezi events could not be regarded as an indication that he had committed a crime alone. Everyone can organize meetings and demonstration marches, participate in organizers and ask for them to become widespread. The main issue here is to show the applicant's involvement in violent acts by concrete facts.

Another critical topic concerns Kavala's telephone conversations. Arslan argues that telephone conversations, which are considered as evidence, are interpreted in isolation from the integrity and context. Some of Kavala's remarks suggest that the democratic opposition views the demonstrations as an oppressor. A colorful element in the justification for the counter-vote is that Kavala's map photograph, which was interpreted as a map of Sevres, was later revealed to be a map showing the regional origins of bee breeds. It was understood that the map was included in

the training book titled 'Production of Queen Bees and published by Nih Ali Nihat Gökyiğit Foundation'.

Arslan stresses that the factual grounds that Kavala had committed the crime attributed to him and the strong evidence required for his arrest could not be demonstrated by the investigating authorities.

In addition, Arslan does not agree with the court's assessment that the arrest warrant is restrained. According to Arslan, when it comes to proportionality, it is necessary to make an assessment of the necessity criterion which is an element of this.

At this point, the President of the Constitutional Court noted that the investigation into Kavala was opened in 2013, and that the overwhelming majority of the evidence in the indictment was again based on Kavala's telephone conversations during the Gezi events in 2013. Arslan questions the reasons why the arrest warrant was taken four years later based on the same evidence. 'The investigating authorities had not been able to show why it was necessary to arrest the applicant after more than four years without further evidence.'

Professor Arslan's views are also important in terms of providing a liberal view to many current legal debates such as the right to assemble and the criteria for arrest.