

PEN NORWAY

**PEN Norway interview with imprisoned Gezi
defendant Lawyer Can Atalay:**

**“Gezi is proof of how important the pluralistic nature of
democracy is, and that pluralism is possible even when we
are under blinding tear gas and plastic bullet attacks.”**



Gezi Davası
Karar Duruşması
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Sıra:
Mine Özerden, Can Atalay
Mücella Yapıcı, Tayfun Kahraman
Gülden Muter

“Gezi is proof of how important the pluralistic nature of democracy is, and that pluralism is possible even when we are under blinding tear gas and plastic bullet attacks.”

PEN Norway followed all the hearings of the Gezi trial, in which 16 defendants, including lawyer Can Atalay were tried for “seeking to overthrow the government by force and violence”.

On April 25, 2022, Can Atalay and other defendants present at the hearing were sentenced to 18 years imprisonment and arrested in the courtroom. Already under pre-trial detention, Osman Kavala was sentenced to aggravated life imprisonment. PEN Norway was a firsthand witness to this shocking abuse of the judicial system and is currently conducting a series of interviews with each imprisoned Gezi defendant.

We know that as a lawyer, you have often been visiting your clients or your imprisoned friends in Silivri F-Type Prison. You are now on the opposite side of the visitor’s desk. First, let us ask about your prison conditions? How are you and how is your health? Is there anything that makes staying in an F-Type Prison a different experience than in other prisons?

First, let me start by saying that Silivri Prison No. 9 can less be legally described as an “F-Type Prison” than a “sui generis” space. F-Type prisons and the persistent objection of the social opposition against these “cell type” prisons are well known. They put a lot of effort into building the “F-Type” prisons as embodiments of the “wall of fear” facing the social/political opposition. Legally, however, the Prison No. 9 is not an “F-Type”. As far as I can tell, the intention was to allow some flexibility to the prison administration in its dealings with the group of prisoners called “all stars”.

We arrived around midnight on April 25. Hakan, Tayfun and I are staying together. Theoretically, we are permanently under lock and key in our 3-person cell. I say theoretically, because thankfully our lawyer friends come to visit us regularly during the day, and “now and then” the two locks and a sliding door are opened. Once a week, we can have non-contact visits with our relatives behind a glass partition and over the phone for one hour. And once a month, we have contact visits which means being able to hug our loved ones. Once a week on Tuesdays, we can make phone calls with our families for ten minutes. Our cell is set out over two storeys with three beds and three closets upstairs, that’s all. Below there is an area of 23m² and that includes the under-stairs area. The bottom floor contains a plastic table, three chairs, a TV and a mini fridge. We can’t say the food is amazing, but we manage. Hakan’s salads, especially, (he makes them at least once a day) make everything easier. The maximum number of books we can keep in the cell per person is ten. Our health is good. Aside from some previous

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ailments we used to have, I can say that all three of us have not had any particular problems so far. I forgot to add: Once a week on Wednesday mornings we meet to exercise. After walking and chatting on an astroturf pitch, we play competitive football matches. “Isolation” is a difficult thing.

In Turkey, you are known not only in relation to the Gezi trial but also for your work as a lawyer in legal cases concerning mass deaths of workers caused allegedly by employer-neglect. Cases such as the mining disasters of Soma and Hendek and the Çorlu train crash. Could you tell us about your interest in representing these particular cases?

I am a socialist. I think it is vital for humanity to transcend capitalism; and this conviction is strengthened with every passing day we are stuck in the grip of ecological crisis.

On the other hand, in relation to Turkey’s future, a country whose social/political/institutional structure has been destroyed by neoliberal policies, I find two concepts to be very important: exploitation of poverty and social murder.

Exploitation of poverty is a concept we use to define the ways a relevant interest group or a sovereign profits as a result of the impoverishment of the people or deprivation of their rights; profits for which the rights of our people are oppressed and disregarded.

Social murder, on the other hand, is a concept we use to indicate the deaths caused by the profit/market conditions and/or the processes of exploitation of poverty under which the public services are provided.

“The cheapest cost item of Turkish capitalism is the lives of its workers”

The Soma mining disaster was all about coercing adult males to comply to work under life-threatening conditions which itself resulted from the elimination of agriculture and peasantry in a large basin. 301 people, who were husbands, brothers, and fathers to some, 301 workers are sent to die an evident and quick death, despite the fact that it was a foreseen risk with all the necessary measures previously planned and their implementation costs were budgeted for which even an extra amount of additional coal quota was allocated.

What happened in Hendek, another town of Turkey is the result of a deliberate choice which takes the cheapest cost item of Turkish capitalism to be the lives of the workers, in an effort to avoid paying the costs of occupational safety measures in a factory where there is an explosion at least once every year and a worker died already in 2014.

The Çorlu train crash was almost, if I may say, a petri dish case showing how privatisation could be transformed into a murder weapon. As a result of the arrangements made on account of “market conditions”, 25 people died on a railway line that had never had an accident in its history of more than a century. We do not know the exact number of injured. The “indictment” is still pending despite the expert reports stating that the responsibilities should be

specified from top to the bottom in the case file, which by the way witnessed attempts to impute the entire incident on four employees at the lowest level in order to close the case completely.

The Aladağ case is a concrete example of how education can become a right only if it is accessible to everyone without exception. In this case, people from the remote mountain villages of Aladağ strove to continue the education of their daughters after primary school. Under the guidance of the Director of the District Directorate of the National Education, the families were pushed to place their children to a student dormitory which was operated by a religious order as there were no public student dormitories in the district centre. Those who follow the news from Turkey should have an awareness that political Islam has been given the green light against the left, and in the field of education, the religious orders have been allowed to operate student dormitories. Previously, there were statements by the children who were forced to wash the dishes which indicated that there was an electricity leakage in Aladağ. Despite this, twelve people, eleven of them children, died as a result of the blocked fire exit doors that were locked so as to keep the girls inside.

We advocate to put an end to these “social murders” and “exploitation of poverty”. Our practice as lawyers is an effort both to prevent these incidents from being covered up and to contribute to democratization by making gains in the field of case-law, even under the unfavourable conditions in Turkey. My professional life started with cases regarding the protection of natural assets, the right to the city and freedom of expression and took a relatively recent turn which I very much cherish.

Do you think that these choices that you made in your professional practice and that the nature of the files you used to defend played a role in making you a target to be pulled into the Gezi trial?

The reasoned judgment of the Gezi Case includes a chapter about my practice as a lawyer. But I think that it failed to cover all that I have been trying to say about our practice of law as regards to the issues I mentioned before and to other social and political cases. Gezi is such an important issue both for them and for us that I believe they decided to postpone other issues that they would like to make points concerning.

“Unjust detention during a trial is an irremediable problem in Turkey”

We were all in shock at the final hearing, where the judicial panel ordered along with the verdict that you should be arrested on the spot. We want to ask you this, especially since you are a lawyer. Is detention straight after conviction a common practice in Turkey? Taken in the context of technical law, does this detention order have a legal basis under the Code of Criminal Procedure?

Unjust detention during a trial is an irremediable problem in Turkey. Usually, a person who may have already been in pre-trial detention during the trial is released once the judge convicts them, provided that she or he has not been given a very heavy punishment. This is because cases are often subject to a protracted appeals process and the convicted person is usually allowed to remain free until this process comes to an end. Our case, however, was the exception. As

Soma, Aladağ, Çorlu, Hendek...

Those responsables are sentenced in the public conscience

Following your arrest, many references were made in the public to the Soma mining disaster case. The two most prominent lawyers of the case, first Selçuk Kozağaçlı and now you, are under arrest and you are in the same prison. However, we know that the defendants of the trial, which took place after the death of 301 mine workers, are now free. Should this fact tell us something about the judiciary in Turkey?

None of those culpable for the deaths of 301 workers are currently in prison, but I was sentenced to 18 years. Selçuk, on the other hand, is about to complete his 5th consecutive year in prison. This situation alone makes any other words about the state of the “rule of law” in our country redundant. However, I would like to emphasize that even under these conditions, the lawyers are doing a wonderful job. The judgment of the Court of Cassation dated September 2020 in the Soma Case and the subsequent actions of the political power to rule out that judgment; that judgment in Aladağ case, which was for us insufficient but still set a historical precedent in the history of our judiciary; and peoples’ support for the cases in Çorlu and Hendek: They are all very valuable. These four cases and others have already been won in the eyes of the people. “Those responsables are sentenced in the public conscience.” After all, this in itself is very valuable.

“ We were targeted because Mücella Yapıcı is an architect, Tayfun Kahraman is a city planner and I am an lawyer and here we are now, in prison. I am the lawyer of the Chamber of Architects. Using all legitimate means, we objected against the government’s attempts to pour concrete over the last remaining public green space located in the city centre. ”

defendants who were on trial and facing aggravated life sentences, we were released pending the verdict. My co-defendants Tayfun Kahraman, Mücella Yapıcı and I were not even taken into custody. For a long time we did not have a travel ban or any other security measure. In effect, this demonstrated that we could leave the country, to abscond, if we so wished. Of course, we did no such thing. Everyone was sure that we would be punished as a result of the President’s long-standing insistence, but the prevailing opinion was that we would not be arrested.

You asked if there is a legal basis in the context of “technical law”, and the answer is very clear. No, there is not. Article 100 of the Code of Criminal Procedure prescribes the conditions for detention. Article 100 of the CCP clearly states that in the absence of other conditions such as the possibility of absconding and tampering with evidence, the expectation of a high penalty alone cannot be a reason for detention. The verdict is inconclusive as given by the 13th Assize Court of Istanbul, with two judges voting yes and one other voting against, on account of the “lack of evidence here, and even if the evidence exists, a crime does not.” In other words, the aforementioned judgment will only be finalized after the case is first considered by the Regional Court of Appeal, and then the Court of Cassation which is the highest authority in the land.. There is even the Constitutional Court stage where the court will have to rule that “there is no violation of rights”. But we were arrested and imprisoned thanks to the decision of two of the three presiding judges.

And, I’m not even going to mention the judgments of the European Court of Human Rights that persistently demanded the freeing of our detained co-defendant Osman Kavala!

“Using all legitimate means, we objected against the government’s attempts”

In your defence statement in June 2019, you described the indictment in this case as a “ragbag”. Within the scope of the Turkey Indictment Project we analysed the Gezi indictment and published a comprehensive report, and we know very well that the indictment fails to meet the requirements of domestic law and multiple international criteria. The charges brought against you, however, have some outstanding features. It hasn’t been much of an issue, but many of the charges seem to be related to your being the lawyer of the Chamber of Architects. Could you explain a little bit about this aspect of the charges brought against you?

We were targeted because Mücella Yapıcı is an architect, Tayfun Kahraman is a city planner and I am an lawyer and here we are now, in prison. I am the lawyer of the Chamber of Architects. Using all legitimate means, we objected against the government’s attempts to pour concrete over the last remaining public green space located in the city centre. The Gezi Park in Taksim serves as an assembly point for surrounding neighbourhoods for potential disaster such as earthquakes. An earthquake of huge proportions has been forecast for the Istanbul area in coming years.

We informed the public and we filed lawsuits regarding each administrative action taken on the subject of building on the Gezi Park. Under normal conditions and within the framework of our Zoning Law, it is clear that such administrative actions should be cancelled or in other words, the cancellation of such actions is the

minimum requirement of the “rule of law”. Moreover, in mid-May 2013, the expert report obtained by the Court’s order on the subject was communicated to us and the relevant administrative authorities and it said “Don’t touch Taksim’s Gezi Park.” Despite all these conditions, some subcontracted workers, who were uninsured by the way, started to uproot trees illegally; citizens who objected to this were met with police violence, which made the objection even more fierce, and which in turn made the police violence even worse, and eventually all citizens who had objections took their objections to the streets. Pluralism of objections and the demand for equality and freedom rising from a grass roots resistance is rare in human history.

Imagine being a lawyer. What would you do? Would you stand in solidarity with those who objected to the removal of the trees or would you prefer to stay home and shut your doors and windows tightly, especially at that moment when you were expecting a court order to halt the construction in a lawsuit you believed to be justified and have filed in the face of political pressures?

“In Turkey, there is a certain tradition of legal defence practice not bowing to oppression”

Would you cite Article 90/1 of the CCP that the citizens could perform a “citizen’s arrest” if they had come across someone who committed a crime such as attempting to destroy the very last green park in the city centre with an illegal construction project, or would you just not bother and turn to your next court case waiting for your attention? Would you not object to the “criminalisation” of these demands of people who claim their most basic rights, on which the Turkish Court of Cassation and the ECtHR have a clear case law? We filed a lawsuit, we resisted the attempts to hastily take the park away from us ahead of the court’s reversal order, and we did not give in to the oppression.

In Turkey, there is a certain tradition of legal defence practice not bowing to oppression; and I hope this tradition continues into the future.

“Freedom of expression here is as important for the lawyer as it is for the client”

In all hearings, but especially during the final ones, we witnessed that the defence lawyers were frequently interrupted by the panel of judges. In fact, your defence statement was interrupted more than once at the final hearing. Is there a certain time limit in Turkey that must be observed during the defence statements? What does freedom of expression mean for an lawyer? Is it a mere personal concern for her?

In Turkey, there is no legally prescribed time limit that a defence statement must observe. But as the presiding judge acts as the supervisor of the hearing, he hides behind this authority and attempts to impose a limit on this duration. All “rights” related to an lawyer and the legal defence practice in general are also their liabilities. Regulations that govern the searching of a lawyer’s body, bag and office are mainly in place to protect the rights of their clients and to ensure that lawyers can provide proper legal assistance to their clients. For this very reason, freedom of expression here is as important for the lawyer as it is for the client.

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Again, your defence statement in June 2019 included the following words: “The Gezi Resistance can be summarized in two main concepts. I think of the Gezi Resistance as a constituting will. It is a will that demonstrated the need for the reconstitution of democracy and the ideal form it should take. Gezi Resistance is a movement of objection. It is a movement of objection that mobilized a constitutional right.” From the beginning of the trial to its end, “Defending Gezi” has been something you’ve always emphasized. Could you briefly explain the Gezi resistance to our readers? What does it mean for Gezi to be a “constituting will”?

Our Gezi Resistance began with an objection against the attempts to pour concrete over a green public space, which caused anyone with an objection to take it to the streets together with an indignation against the police violence that became enormously massive all over Turkey. Objections, demands and social groups have coalesced in a way that was unprecedented. On the other hand, the Gezi Resistance is also important because it is “pluralistic” not “monistic”. It is the proof of how important the pluralistic nature of democracy is, and that pluralism is possible even when we are under blinding tear gas and plastic bullet attacks. It is an important illustration of the popular will and contribution of ordinary people that politics entails. “Democratizing the democracy”, millions of democracy defenders showed that a pro-freedom social/political line would triumph over political Islam.

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“Gezi is a constituting will”

Marx claims that what mattered most about the Paris Commune of 1871 was not any ideals it sought to realize but rather its own “working existence”. It is the same for the Gezi Resistance. Joint decisions were made by people who had markedly different ideas and who then went on to resist, and even if only in Istanbul, inside the Park, it has been the solidarity itself not the government which was decisive even for a couple of days, despite the fact that there was not any decision reached in any meeting, and a “commodity-free” space, where you can meet all your needs without money, was created: These were important.

Gezi is a “constituting will” in that it pointed out the possibilities as well as being an objection about the current state of affairs.

“They want people to stop claiming their rights”

In your defence statement, you made a point that we think should be a topic of debate among the law students and it was as follows: “I object to a legal order that speaks about citizen’s obligations without speaking about their rights.” Could you tell us a bit about that?

Thanks to the centuries-long struggles of humanity, rights and freedoms have been transformed into constitutional texts and become supranational legal norms. Like all of us, I think this is precious. In this “neoliberal era”, however, all over the world, but especially in Turkey during the AKP period as its radical expression, they want us to stop talking about the rights (and freedoms) of citizens and to give up asserting our rights., All they want to hear about are our obligations which we are expected to fulfil completely. For example, citizens should pay taxes, but how that tax is spent to fund some underground business should not be questioned or discussed. An important feature of the AKP is that they want people

to stop claiming their rights, and let Erdogan bestow “favours” and help the groups he sees fit. As seen in the Gezi indictment, all they want is to stop us from talking about the right to the city, which gained mention in Turkey’s Constitution as the citizen’s “right to live in a healthy environment”, or the collective use of freedom of expression. Instead they would have us strictly comply with the orders and instructions of the police chiefs who act (blatantly) against the law! I consider this to be an unacceptable act against human dignity.

“The Gezi Trial has been a ‘political process’ from beginning to end”

The following statements at the final hearing were also striking: “Your Honor, this is not a judicial operation. IAs someone who is being tried in an assize court I have to say that this is rather a political operation.” Do you think that there is a political motive behind the criminalization of the Gezi protests? That was certainly the finding of the European Court when they examined Osman Kavala’s case.

The Gezi Trial has been a “political process” from beginning to end. We are talking about an investigation that lasted more than nine years, and about the persistent efforts to explain Gezi with a mind-blowing conspiracy theory with the intention of defaming it that goes back to the period of the Fetullah Gülen supporters and AKP coalition, and which continued even after this coalition collapsed. After we were unexpectedly and surprisingly acquitted in February 2020, President Erdoğan made certain statements that proved any other option than our punishment would be unacceptable for the head of state.

“The image of the ‘young people hugging trees’ has proven to be unbeatable”

The image of the “young people hugging trees” has proven to be unbeatable. Those who protected, at the cost of their lives, a park that does not belong to anyone, but to all of us, became the source of hope for the whole of society. For the Fetullah Gülen supporters and AKP elites, the Gezi Resistance was a hard nut to crack through legal trials, and therefore they resorted to any means they could find to defame it.

A single example: Previously, a decision was made to merge our file with the file of a football team supporter group named Çarşı, as there was no element of “force or threat” involving us in the Gezi Case. But then, suddenly – and that really happened before our eyes– it was considered “risky” to penalize a group of football supporters, and their file was separated from ours and we were penalized in two hearings.

“They are trying to smear the Gezi Resistance through a court ruling”

They are trying to smear the Gezi Resistance through a court ruling; this is both an effort to “rewrite history” and a way of saying “don’t you dare do it again” by striking fear in the hearts of citizens who are trying to make themselves heard in public squares and on the streets.

The court’s decision on April 25, and the solidarity and reaction that emerged after our arrests show once again that their efforts have failed.

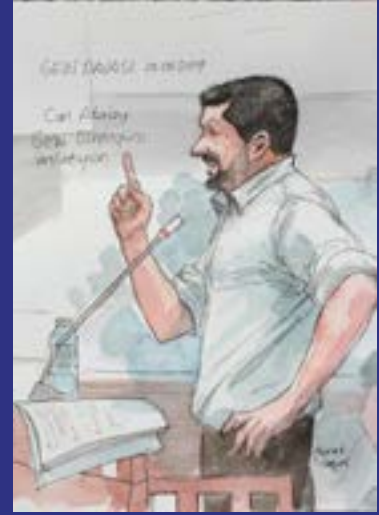


Illustration: Murat Başol

Rest will be a “political process” and the balance of political forces will determine our situation

What about the future? Since you are the only lawyer among the defendants, we wanted to ask you: how do you envision the process developing from now on?

I have various “legal” predictions, even visions about it, but I do not want to bore the reader with details, as the rest will be a “political process” and the balance of political forces will determine our situation.

However, considering the previous decision, it is a legal imperative for the court of appeal to issue an annulment decision even at the “first examination” stage; I would like to emphasize that if the Constitutional Court is to keep its very own legitimacy, a decision of violation of rights regarding us without delay is a minimum requirement for that to happen.

“ At the beginning of this interview, I thanked you very much for your kind words and the high level of solidarity you expressed. We are all over the world, we are not few and we are all together. Let no one doubt: “We shall win.” ”

What books are you reading right now? And what are the books you are planning to read in the future?

Since yesterday, I've been reading “Out Stealing Horses” by Per Petterson. I started reading this book yesterday to hear a voice from Norway as I would be chatting with Norwegian friends. Just before that, I read Kristin Ross’s “Communal Luxury” and “May '68 and Its Afterlives” simultaneously. Once I finish “Out Stealing Horses”, I will start reading a selection titled “Commons”.

Finally, is there any message you want to give to us or to the international community?

At the beginning of this interview, I thanked you very much for your kind words and the high level of solidarity you expressed. We are all over the world, we are not few and we are all together. Let no one doubt: “We shall win.” ■