

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on minority issues;
the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and
protection of the right to freedom of opinion and expression and the Special Rapporteur on the
situation of human rights defenders**

REFERENCE:
UA TUR 12/2017

2 November 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on minority issues; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 34/6, 28/9, 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of **Mr. Osman Kavala** under yet unspecified charges, which may be related to his activism in favor of dialogue between the Turkish Government and minorities within the country, as well as with neighboring countries, such as Armenia and Greece.

Mr. Kavala is a Turkish human rights defender, businessman and philanthropist. He is the founder and chairman of the Anadolu Kültür Foundation, which operates cultural centers throughout the country seeking to promote intercultural cooperation and dialogue.

According to the information received:

On 18 October 2017 Mr. Kavala was arrested in Istanbul Ataturk Airport upon his return from a trip to Gaziantep, where he attended meetings related to cultural activities at the Goethe-Institut. After his arrest, Mr. Kavala was remanded in custody for seven days ahead of a court hearing scheduled for 25 October 2017. In this hearing, however, no formal accusation was presented, and his period of pre-trial detention was extended for seven additional days. Since, then, no information has been made public.

Mr. Kavala's case was the object of a public statement made by President Recep Tayyip Erdoğan on 24 October 2017, where he accused him of criminal acts and said that "we will stand up against those who try to shoot this nation from inside." Other high-level public Turkish officials, such as the member of the Grand National Assembly, Aydın Ünal, have publicly accused Mr. Kavala of having links with the Fethullah Gülen movement and the Kurdistan Workers' Party (PKK).

Serious concern is expressed at the arrest, extended pre-trial detention, and prosecution for yet unspecified charges of Mr. Osman Kavala. In particular, concern is expressed at the likelihood that the Office of the Prosecutor will present charges related to terrorism against him, in connection with his cultural activism with minorities in Turkey as well as with nationals of other countries. Finally, concern is expressed at the statements made by high-level public officials against Mr. Kavala, including the President of Turkey, jeopardizing the principle of presumption of innocence and compromising the independence of the judges handling the case.

We also take the opportunity, as we have done in a number of previous communications, to express our deep concern at the state of emergency measures in place at the moment in Turkey. As repeatedly stated before, your Excellency's Government has not demonstrated that these measures comply with the requirements of necessity and proportionality under international law.

Without expressing at this stage an opinion on the facts of the case, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee Mr. Kavala's right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003. In particular, we would like to emphasize Mr. Kavala's rights under paragraphs 2 and 3 of article 14 to be presumed innocent until proven guilty according to law, to be informed promptly of the nature and cause of the charges pressed against him, and to be tried without undue delay.

We would also like to remind your Excellency's Government of its obligation under article 19 of the ICCPR to secure the enjoyment of the right to freedom of opinion and expression, which is one of the essential foundations of a democratic society. We wish to reiterate as well the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We also call to the attention of your Excellency's Government the international standards regarding the protection of minorities, in particular article 27 of the International Covenant on Civil and Political Rights (ICCPR), as well as the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

Furthermore, we wish to underline that any limitation to the right to freedom of expression must meet the criteria established by article 19(3) of the ICCPR, which

establishes that limitations must be determined by law, must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed, and must be directly related to the specific need on which they are predicated. We would additionally wish to highlight the fundamental principles set forth in articles 1 and 2 of the UN Declaration on Human Rights Defenders, which provide for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms.

Finally, we wish to recall your Excellency's Government's obligations under Article 15 of the International Covenant on Economic, Social and Cultural Rights to respect the right of all persons to take part in cultural life.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Kavala, in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the arrest and detention of Mr. Kavala, and explain how these are compatible with Turkey's obligations under articles 9 and 19 of the ICCPR and article 15 of the ICESCR.
3. Please provide information on the measures adopted by your Excellency's Government to respect the fundamental guarantees of due process in Mr. Kavala's case, including the respect of the principle of presumption of innocence, and the rights to be informed promptly of the charges brought against him and to be tried without undue delay.
4. Please provide additional information on the compatibility of the state of emergency measures with the obligations of Turkey under international human rights law, including at the moment of adoption and at present.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeal in no way prejudices any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We would further like to inform your Excellency's Government that we are considering to publicly express our concerns in the near future as, in our view, the information in our possession is sufficiently credible to indicate a matter warranting immediate attention. Our public statement would indicate that we have been in contact with your Excellency's Government to clarify the case in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Fernand de Varennes
Special Rapporteur on minority issues

Karima Bennoune
Special Rapporteur in the field of cultural rights

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders