



**Permanent Mission
of the Republic of Azerbaijan
to the UN Office and other
International Organizations
GENEVA**

Ref: 0909/12/19/23

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, and with reference to the joint communication sent by 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, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Independent Expert on the enjoyment of all human rights by older persons, regarding Mr. Akram Aylisli, dated 13 November 2019, has the honor to transmit herewith the information by the Government of the Republic of Azerbaijan regarding the abovementioned joint communication.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure: 5 pages

Geneva, 26 December 2019



Office of the United Nations
High Commissioner for Human Rights
GENEVA

Mandates of 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; the Special Rapporteur on the right of everyone to the enjoyment on the highest attainable standard of physical and mental health; and the Independent Expert on the enjoyment of all human rights by older persons.

Case of Mr. Akram Aylisli
Reference: AL AZE 2/2019

Date of communication:
13 November 2019

OBSERVATIONS OF THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN

1. The following are the observations of the Government of the Republic of Azerbaijan (the Government) with respect to information received by 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, the Special Rapporteur on the right of everyone to the enjoyment on the highest attainable standard of physical and mental health and the Independent Expert on the enjoyment of all human rights by older persons concerning the alleged violation of the rights of Mr Akram Aylisli.
2. The Government observes that at around 4:10 am of 30 March 2016, during the registration of passengers at Heydar Aliyev airport, the passenger Mr Aylisli ignored the legal demands of the State Border Service, started shouting and yelling, demonstrated utter disrespect to society and assaulted one of the border officers N.S., therefore grossly violating the public order.
3. On 30 March 2016 a criminal case was instigated under article 221.1 (hooliganism) of the Criminal Code of the Republic of Azerbaijan based on the materials collected in the Investigation Department of the Air Police.
4. During the investigation, on 05 April 2016 the State Border Service employee N.S. was identified as the victim, testimonies of the witnesses of the incident were taken and other necessary investigative actions were carried out.
5. On 6 April 2016 Mr Aylisli was charged with hooliganism under article 221.1 of the Criminal Code and a restrictive measure of "restraining order" in accordance with article 165 of the

Criminal Procedure Code was chosen against him. According to Article 165 a restraining order is a restrictive measure under which the suspect or accused shall make a written undertaking to remain at the disposal of the prosecuting authority, not to go elsewhere without its permission, not to hide from it, not to engage in criminal activity, impede the investigation, investigation or court hearing, to attend as required by the preliminary investigator, investigator, prosecutor or court and to inform them of any change of address.

6. On 22 August 2016 the criminal case was reclassified from article 221.1 to article 315.1 of the Criminal Code (resisting authorities with violence) and sent to the Khazar District Prosecution Office. On 5 September 2016 the case was sent to the Baku City Prosecution Office for further investigation.
7. The investigation revealed that at around 4:10 am of 30 March 2016, during the passport control of the passenger Mr Aylisli for the Baku-Frankfurt flight, at Heydar Aliyev airport's new terminal's 3rd floor, sector "B", the computer programme was unable to read the barcode of Mr Aylisli's passport. While the border officer N.S. who was checking Mr Aylisli's passport attempted to clarify the matter, Mr Aylisli started to shout and yell, causing a public disturbance. Despite repeated requests from N.S. to stop his actions, Mr Aylisli continued to demonstrate disrespect to society. Therefore, N.S. informed and invited the Aviation Security Department.
8. At the same time, Mr Aylisli's son who had already passed through the passport control and was ready to take his flight, refused his flight.
9. According to article 3.7.4 of the Rules "On inspection of passengers, their hand luggage and luggage" approved by the Order No. 226 of 10 July 2014 of Cabinet of Ministers, in case if the passenger refuses to take his flight, search shall be conducted on him, on his luggage as well as on persons travelling with him and their luggage. Therefore, Mr Aylisli and his son were invited to the search room of the Aviation Security located on the same floor of the Terminal.
10. The search was conducted by N.S., in accordance with article 5.4 of the Law "On Border Guards", in force at the material time. According to this article the border guards had the right "to carry out, in the prescribed manner, independently or together with customs agencies, the inspection of goods and other property of persons crossing the state border,

in necessary cases, detain them for inspection and withdraw them in the manner prescribed by law."

11. While N.S. was conducting the search Mr Aylisli attempted to resist him, failed to comply with N.S.'s lawful demands and punched him in the chest causing injury in the form of bruise not dangerous to life and health.
12. The aforementioned led the investigation to conclude that Mr Aylisli's actions fell under article 315.1 of the Criminal Code, according to which "resistance to the authorities in the performance of their duties, with the use of violence not dangerous to life and health, the use of such violence or threat of violence against him and his relatives in connection with the performance of official duties ... shall be punishable by imprisonment for the term up to three years."
13. The investigation materials clearly show that charges against Mr Aylisli have nothing to do with his publications or book. As regards, his inability to travel abroad, this was due to the restraining order imposed under article 165 of the Criminal Procedure Code.
14. Finally, the Government notes that according to Article 53.1.4 of the Criminal Procedure Code the criminal prosecution may be suspended "if the accused is unable to attend the proceedings because of serious illness or not being within the borders of the Azerbaijan Republic". During the investigation period Mr Aylisli suffered a serious heart illness and was unable to attend the proceedings. Considering the aforementioned and in accordance with Article 53.1.4 of the Criminal Procedure Code, on 7 April 2017 the criminal case against Mr Aylisli was suspended.
15. In light of the above, there is no evidence whatsoever to suggest that the Republic of Azerbaijan failed to comply with its obligations taken under international human rights law.

RELEVANT DOMESTIC LAW

16. The Code Criminal Procedure provides in its relevant part as follows:

"Article 53. Grounds for suspending the conduct of the criminal prosecution

53.1. The criminal prosecution may be suspended in the following circumstances:

53.1.1. if the person to be charged is unknown;

53.1.2. if the whereabouts of the person to be charged are unknown;

53.1.3. if the person to be charged is not available to the investigating authority or the court;

53.1.4. if the accused is unable to attend the proceedings because of serious illness or not being within the borders of the Azerbaijan Republic;

53.1.5. if the question of depriving the person charged with an offence of his right to immunity or the question of his extradition by a foreign country is raised in accordance with the law;

53.1.6. if the court submits to the Plenum of the Supreme Court of the Azerbaijan Republic a request for the constitutionality of the legislation applied or to be applied in respect of the prosecution to be examined by the Constitutional Court of the Azerbaijan Republic.

..."

"Article 154. Concept and types of restrictive measure

154.1. A restrictive measure is a coercive procedural measure intended to prevent unlawful behaviour by the suspect or accused during criminal proceedings and to ensure the execution of the sentence; it shall be applied in the cases described in Article 155.1 of this Code.

154.2. Restrictive measures may be the following:

154.2.1. arrest;

154.2.2. house arrest;

154.2.3. bail;

154.2.4. restraining order;

154.2.5. personal surety;

154.2.6. surety offered by an organisation;

154.2.7. police supervision;

154.2.8. supervision;

154.2.9. military observation;

154.2.10. removal from office or position.

..."

"Article 165. Restraining order

165.1. A restraining order is a restrictive measure under which the suspect or accused shall make a written undertaking to remain at the disposal of the prosecuting authority, not to go elsewhere without its permission, not to hide from it, not to engage in criminal activity, impede the investigation, investigation or court hearing, to attend as required by the preliminary investigator, investigator, prosecutor or court and to inform them of any change of address.

165.2. A restraining order shall be imposed on the suspect or accused by the prosecuting authority."

17. The Criminal Code provides in its relevant part as follows:

"Article 221. Hooliganism

221.1. Hooliganism, that is the deliberate actions roughly breaking a social order, expressing obvious disrespect for a society, accompanying with application of violence on persons or threat of its application, as well as destruction or damage of another's property—

is punishable by a fine at the rate of one thousand thousand to three thousand manats or corrective work for up to one year, or restraint of freedom for the term up to one year, or imprisonment for the term up to one year.

..." |

"Article 315. Resistance or application of violence concerning the representative of authority

315.1. Resistance to the authorities in the performance of their duties, with the use of violence not dangerous to life and health, the use of such violence or threat of violence against him and his relatives in connection with the performance of official duties — shall be punishable by imprisonment for the term up to three years.

..."

18. The Law "On Border Guards", in force at the material time, provided as follows:

"Article 5. Rights of the Border Guards

4) the border guards had the right "to carry out, in the prescribed manner, independently or together with customs agencies, the inspection of goods and other property of persons crossing the state border, in necessary cases, detain them for inspection and withdraw them in the manner prescribed by law.

..."