

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 and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

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Excellency,

We have the honour to address you in our capacity as 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 in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 28/9, 34/27 and 34/23.

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. **Karan Vafadari** and his wife Ms. **Afarin Nayssari**, Iranian-American Zoroastrians, art gallery owners in Tehran and prominent figures of the Iranian artistic and cultural community.

According to the information received:

On 20 July 2016, Mr. Vafadari and Ms. Nayssari were arrested by Iran's Revolutionary Guards Intelligence Organization at Tehran Imam Khomeini International Airport as they were about to embark on a flight to Italy to attend the Venice Art Biennale.

The couple was accused of ostensibly serving alcohol in their home and hosting mixed-gender parties and suspected of espionage.

They were initially told by the judge on duty that due to the fact that there was no proof of "espionage" they would be freed with a minimum amount of bail. Although a minimum amount of bail was reportedly fixed by a judge, they were not allowed to pay this amount and were immediately transferred to Evin prison's 2-A building, operated by the Islamic Revolutionary Guards Intelligence Service (IRGIS) and kept in solitary confinement for a month. During this period, their house was searched on numerous occasions. The couple was also brought handcuffed to their home and then to their gallery, where items of art were either confiscated or destroyed.

After a month of interrogation on their alleged espionage-related activities, and despite Mr. Vafadari's interrogator reportedly admitting that there was no evidence in their case, both of them were kept in detention for an additional two months period without receiving an official notification of this extension and without being allowed to speak to a lawyer. In total, the couple remained in detention without access to a lawyer for five months. During intensive interrogations, Afarin Nayssari was reportedly requested to spy on her friends in the art world and her husband; when she refused, she was returned to solitary confinement.

In October 2016, additional "national security" charges, namely the charge of "attempt to overthrow the regime", were brought against them in order to justify the prolongation of their detention.

In December 2016, the couple was moved out of IRIGS's 2-A building to the common area of Evin Prison and was officially informed of additional charges against them, namely: "attracting and signing up spies through relationship with foreign embassies" in Tehran, and "operating a house of immorality and prostitution" in their home and "making and selling wine" and "storing smuggled distilled alcoholic beverages".

Six months after their arrest, and for the first time, Mr. Karan was questioned by the prosecutor before being charged with: "conferring to conspire against national security," an offence which carries a prison term of up to 5 years. As to Ms. Nayssari, she was charged with "Exhibiting and selling un-ethical and immoral art," which carries a one-year prison term. Most of the original charges were reportedly dropped by the prosecutor for lack of any evidence.

On 30 December 2016, the couple appeared at a preliminary hearing at Branch 15 of the Revolutionary Court, under the six above mentioned charges which carry a total of 21 years imprisonment in addition to cash fines, confiscation of their home and their automobiles. Judge Salavati who was presiding this hearing reinstated the earlier charges dropped due to lack of any evidence and ordered the couple to dismiss their lawyer. No valid justification was reportedly given for these decisions. Since then, three lawyers have declined to take the cases of Mr. Vafadari and Ms. Nayssari. Eight months after their arrest, the couple still do not benefit from legal representation. In addition, it remains unclear when a new hearing into their case will be scheduled.

Concern is expressed that the arrest and detention of Mr. Vafadari and Ms. Nayssari may be solely related to the peaceful exercise of their right to freedom of artistic expression and creativity, resulting in undue restrictions on the right of all persons in Iran to enjoy and have access to the arts. Concern is also expressed that they were subjected to

serious due process and fair trial violations during their detention, including prolonged periods of solitary confinement and lack of access to lawyers or members of their family. Further concern is expressed about the growing number of reports concerning similar cases that are being communicated to us and that seem to point towards a harder line of repression toward artists and professionals from the field of culture in Iran.

Without making any judgement as to the accuracy of the information made available to us, the above allegations appear to be in contravention with international law, in particular the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which Iran ratified on 24 June 1975. The right to have access to a lawyer is also enshrined in the UN Basic Principles on the Role of Lawyers.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Furthermore, we would like to refer your Excellency's Government to article 27 of the Universal Declaration of Human Rights and article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified by your Government on 24 June 1975, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have also undertaken to respect inter alia the freedom indispensable for creative activity. The Special Rapporteur in the field of cultural rights stresses that all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 85 and 89 d)

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 the above-mentioned persons 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 details of how the prosecution and imprisonment of Mr. Vafadari and Ms. Nayssari are in compliance with international human rights law, norms, and standards as stated, inter alia, in the UDHR, ICCPR and ICESCR, in particular with the rights to freedom from arbitrary arrest and detention, freedom of opinion and expression the right to take part in cultural life and the freedom indispensable for creative activities. Please also explain the reasons why Mr. Vafadari and Ms. Nayssari were tried before a Revolutionary Court.
3. Please provide detailed information on the measures taken to provide to, Mr. Vafadari and Ms. Nayssari the guarantees of due process and fair trial, including the guarantee to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing as established in international human rights law, and in particular articles 9 and 14, of the ICCPR.
4. Please provide information concerning the national legislation related to freedom of opinion and expression, including in the form of arts, and how these are in conformity with the international norms and standards mentioned above.

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.

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.

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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

Asma Jahangir
Special Rapporteur on the situation of human rights in the Islamic Republic of Iran