

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 of the highest attainable standard of physical and mental health; and the Independent Expert on the enjoyment of all human rights by older persons

REFERENCE:
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Excellency,

We have the honor to address you in our capacities 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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Independent Expert on the enjoyment of all human rights by older persons, pursuant to Human Rights Council resolutions 37/12, 34/18, 33/9 and 33/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the violation of the rights of Mr. Akram Aylisli. Mr. Aylisli is a renowned playwright, novelist, and translator, who has been considered for decades to be one of the most influential writers in Azerbaijan. His books were taught at schools, and he was awarded the official title of People's Writer in 1998, as well as two of the highest state awards, the Shokrat and Istiglal medals. He was also a Nobel Peace Prize nominee in 2014.

According to the information received:

Since the publication in 2012 of his novel "Stone Dreams", which is based on the Armenian-Azerbaijani conflict and depicts the real-life violence carried out by Azerbaijanis against Armenians living in Baku in 1990, Mr Aylisli has reportedly been a target of authorities.

On 7 February 2013 he was stripped, by presidential decree, of his presidential pension and of his title of "People's Writer." The decree alleges that the novel was libelous and distorted the history of Azerbaijan. Members of the Azerbaijani parliament have reportedly discussed whether he should be expelled from Azerbaijan and his citizenship revoked. Additionally, his books have been withdrawn from school curricula and production of one of his plays was cancelled by the Baku National Drama Theater. It is also alleged that his wife and son were forced to resign from their jobs in the public sector because of the controversy. Furthermore, protestors have publicly burned Mr. Aylisli's books and he has endured threats of physical harm.

Mr Aylisli maintains that his work has been recognized by world-class artists and politicians as literary work with a humanistic and peace-loving perspective. He has also stressed that his book does not in any way seek to discredit the people of

Azerbaijan, but rather is intended to serve the national Azerbaijani literary tradition.

On 30 March 2016, Mr Aylisli was detained at Heydar Aliyev airport in Baku, as he attempted to travel to Venice, Italy, where he was due to speak at the “Incroci di Civiltà” literary festival. At 4:00 am, he was detained by border guards and was thereafter held for five hours, during which he was repeatedly questioned and his bags were searched several times. At 9:30 am, the airport police took Mr Aylisli into custody on grounds of causing a public disturbance and he was held and interrogated for over 10 hours.

On 6 April 2016, Mr Aylisli was charged with hooliganism under article 221.1 of the Criminal Code for having allegedly punched a guard in the chest and causing him injury. On 22 April 2016, the charges were elevated to resisting authorities with violence under article 315.1 of the Criminal Code. This was after Mr Aylisli wrote an open letter to Azerbaijan’s President Ilham Aliyev, in which he expressed the view that charging a 78-year-old man for assaulting a young border control guard was absurd and asked that charges against him be dropped.

As a part of its investigation, the Prosecutor General’s office has confiscated Mr. Aylisli’s identity and travel documents. It has been alleged that this negatively impacts his ability to access appropriate health care services. In September 2018, he wrote an open letter to the Prosecutor General stressing the fact that he is in poor health, suffering from acute chronic bronchitis and heart and liver failure, and that the travel ban does not allow him to travel abroad for treatment, especially during the summer months, when his diseases get worse. His letter is, reportedly, still unanswered.

The continued travel ban faced by Mr. Aylisli has also meant that he has been unable to attend several cultural and literary events to promote his books, including his latest book “Farewell, Aylis,” published in November 2018.

Further, according to his family, the only evidence against him is the testimony of the border control guard. There is reportedly no video recording of the alleged incident, despite the presence of airport security cameras. Three years after the incident, Mr Aylisli is still awaiting trial. According to his lawyer, the alleged incident qualifies as a minor offence. Accordingly, the preliminary investigation should have been concluded within nine months, in line with article 218.10.2 of the Code of Criminal Procedure. If convicted, Mr Aylisli risks up to three years in prison.

We express grave concern at the detention of Mr. Aylisli on 30 March 2016, as well as the subsequent prosecution and charges brought against him, all of which appear to be linked to the publication of his novel on a critical and politically sensitive subject. We wish to stress, in this regard, that the freedom of expression protects expressions that “shock offend or disturb”. We further express our concern at the grounds for the presidential decree stripping Mr. Aylisli of his prizes, and deplore statements made by

parliamentarians, reminding that the freedom of expression protects also expressions that provide alternative narratives of historical facts. Furthermore, concern is raised at the imposed restriction of movement and at the limits imposed on Mr. Aylisli's access to health care linked to the confiscation of his identity documents.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues raised by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for the charges against Mr. Aylisli. Explain how these measures are compatible with international norms and standards enshrined in the International Bill of Rights.
3. Please explain the reasons for the delay in conducting the preliminary investigation against Mr Aylisli, which in accordance with article 218.10.2 of the Code of Criminal Procedure should have been concluded within 9 months.
4. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that Mr. Aylisli has access to adequate and age-appropriate medical and related care while the trial against him remains pending.
5. Please indicate what measures have been taken to ensure that everyone has the right to take part in cultural life and exercise his/her freedom of artistic expression, including the right to express controversial opinions about social issues through artistic expression.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure that Mr. Aylisli is given access to medical care, 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(s) responsible for the alleged violations.

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

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Rosa Kornfeld-Matte
Independent Expert on the enjoyment of all human rights by older persons

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to article 27(1) of the Universal Declaration of Human Rights and article 15(1)(a) of International Covenant on Economic, Social and Cultural Rights (ICESCR), which was acceded to by your Government on 13 August 1992, 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.

With regard to the condemnation that the novel "Stone Dreams" has received from the State, we would also like to refer your Excellency's Government to General Comment No. 21 of the Committee on Economic, Social and Cultural Rights, which recalls the right of everyone to "enjoy the freedom to create, individually, in association with others, or within a community or group, which implies that States parties must abolish censorship of cultural activities in the arts and other forms of expression" (E/C.12/GC/21, paragraphs 44, 48 and 49). As stated in this General Comment, contribution to cultural life is also to be understood as a right to take part in the development of the society to which one belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights (para. 15 (c)).

We would also like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Azerbaijan 13 August 1992, 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."

In its General Comment No. 34, the Human Rights Committee has expressly stated that attacks against a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, can never be compatible with article 19 of the Covenant (CCPR/C/GC/34, para. 23). Furthermore, the Covenant does "not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events" (para. 49). The application of any restriction must in any event comply with the strict requirements under article 19 (3), in that they must pursue a legitimate aim, be provided in accordance with the law, and be necessary and proportionate. Likewise, States should resort to limitations of artistic freedoms only when absolutely necessary (A/HRC/23/34, paras. 3 and 32).

In Human Rights Council resolution 12/16, the Human Rights Council expresses its concerns that "violations of the right to freedom of opinion and expression continue to occur, often with impunity, including extrajudicial killings, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination as well.... as on surveillance, search and seizure, and censorship, against

persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers”.

We further recall Article 14 of the ICCPR which provides the fundamental guarantees of due process, in particular with regard to individuals charged with criminal offences. In particular, article 14 (3) (c) guarantees the right of everyone to be tried without undue delay.

We would like to also refer to article 12 of the ICESCR, which enshrines the right to health. In accordance with this provision, States are under the obligation to respect this right by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 34).

We would like to refer to the United Nations Principles on Older Persons and the first report of the Independent Expert on Older Persons (A/HRC/27/46), in which the mandate-holder stressed the importance of procedural guarantees and access to justice for older persons (para. 46) and draw your Excellency’s attention to the particularly important role older persons play in society and cultural life as transmitters of information, knowledge and values (Committee on Economic, Social and Cultural Rights, General Comment No. 6, para. 38).

Finally, we recall that the Special Rapporteur in the field of cultural rights presented to the Human Rights Council in March 2018 a report on the potential of actions in the field of arts and culture to promote fuller enjoyment of human rights (A/HRC/37/55). In that report, the Special Rapporteur noted that the right to freedom of artistic expression and creativity includes the right to freely contribute to artistic expressions and creations, to have access to and enjoy the arts, and to disseminate their expressions and creations. This also includes the right of individuals and groups, through their artistic and cultural expression, to contribute to social debates, challenge assumptions about accepted beliefs and revisit culturally inherited ideas and concepts (para. 19). She further noted that limitations to freedom of artistic expression must meet the high threshold of article 19 (3) of the International Covenant on Civil and Political Rights (ICCPR) and should be imposed for the sole purpose of promoting general welfare in a democratic society. When resorting to such limitations, decision makers, including lawmakers and judges, 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 beliefs and world visions (para. 21). In addition, she noted that investments in the field of culture and in the conditions that allow people to learn, develop their creativity, experience the humanity of others and exercise their critical thinking are necessary to create cultural democracies and foster civic engagement (para. 22).