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ECHR-LE148bP3
KGU/enu
Application No. 1/16
Emin Rafik Oglu Huseynov v. Azerbaijan

RE: SUBMISSION OF THIRD PARTY INTERVENTION

Dear Sir/Madam,

With reference to your letter of 31 August 2018 granting the Institute of Statelessness and Inclusion ("ISI") leave to intervene as a third party in the Court's proceedings in the above case, pursuant to Rule 44 § 3 of the Rules of the Court, please find enclosed herewith, the Third Party Intervention of (ISI).

Yours faithfully

Amal de Chickera
Co-Director

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Institute on Statelessness and Inclusion

THIRD PARTY INTERVENTION IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No 1/2016

Emin Rafik Oglu Huseynov v The Republic of Azerbaijan

WRITTEN SUBMISSIONS
of the Institute on Statelessness and Inclusion

(Pursuant to permission granted by the President of the Section under Rule 44 § 3 of the Rules of the Court and notified on 31 August 2018)

21 September 2018

Contact:

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1. These Written Submissions are submitted by the Institute on Statelessness and Inclusion ('ISI'), with *pro bono* legal assistance from Eric Fripp of Lamb Building, Temple, London EC4Y 7AS, and Jarlath Clifford. ISI is an independent non-profit organisation committed to promoting the human rights of stateless persons and fostering inclusion so as to aspire ultimately to end statelessness.[1]

Summary

2. In summary, ISI submits that arbitrary deprivation of nationality:
   - includes forcing an individual to renounce their nationality and this infringes their right to private and family life within the meaning of article 8 of the Convention and of international human rights law;
   - has a 'chilling effect' on individuals' right to freedom of expression under article 10 of the Convention and this chilling effect may be especially profound if deprivation will result in statelessness;
   - has been a historical practice in Europe that has been re-established over the past decade by some Contracting Parties to the Convention to sanction and silence human rights defenders.

Arbitrary deprivation of nationality

3. These Written Submissions take as part of the context to the present case the phenomenon of arbitrary denationalisation. Paul Weis, noted as an international lawyer, author of an authoritative monograph on nationality and statelessness, and Chair of the Council of Europe Committee on Refugees and Asylum, defined denationalisation as '*deprivation of nationality by decision of administrative authorities, or even by operation of law, on certain grounds, such as entry into foreign military service*'.[2] ISI holds the position that where an individual has renounced nationality following improper pressure by the State or its agents, this remains effective denationalisation by the State:

> '*the line between denationalisation... and renunciation may require some reflection... a State which directly or indirectly pressurises individuals into so-called "voluntary" renunciation- for instance by offering remission of lengthy imprisonment or hard labour- could very reasonably be described, because of the absence of true voluntariness, as engaged in denationalisation.*'[3]

Given the facts in the instant case, ISI believes the instant application *a fortiori* to reveal a case of effective denationalisation by Azerbaijan.

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1 ISI has extensive experience making submissions and interventions before UN, regional, and national human rights bodies, on the right to nationality, the human rights of stateless persons, and deprivation of nationality. ISI has specific expertise concerning deprivation of nationality, having scrutinised laws and policies of states depriving citizens of their nationality in breach of international and regional human rights standards, conducted an extensive review of international and regional standards related to deprivation of nationality, and has convened expert meetings on this topic. See www.institutesi.org.

2 P Weis, *Nationality and Statelessness in International Law*, (2nd edn, Leiden, Brill, 1979), p120.

3 E Fripp, *Nationality and Statelessness in the International Law of Refugee Status* (Oxford, Hart, 2016), §1.55 (p31).

4. Denationalisation became an important feature of the post-World War 1 Europe. Sir Richard Plender has noted in this context that:

> '*...the practice of withdrawing nationality from dissident individuals or groups has become increasingly widespread. In the 1920s, between one and two million people were deprived of their Soviet citizenship by the Bolsheviks. The German Reich followed a similar policy in respect of Jews in the 1930s. Measures of a comparable character (although on a smaller scale) were adopted during the same decade by the Italian and Turkish authorities.*'[4]

5. Weis observed that:

> '*Denationalisation gave rise to hardly any discussion as to the consistency of this measure with international law as long as it was applied on a limited scale, mainly as a penal measure in connection with criminal convictions. The question of the admissibility of denationalisation arose only when States began, for political reasons, to deprive great numbers of their nationals of their nationality, and particularly when Soviet Russia resorted to mass denationalisation.*'[5]

By 1926 almost 10 million persons were estimated to be without national protection in Europe.[6] In the period between the two World Wars, large scale denationalization played a significant role in motivating the development of international law regimes seeking to address the position of refugees, then generally defined as persons outside their country of origin and without access to national protection.

6. Deprivation of nationality attracted the attention of respected commentators upon the politics of the interwar period. For Arendt, '*once they [affected persons] had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were rightless, the scum of the earth.*'[7] Their situation was part of a wider collapse of political and social values:

> '*...with the stateless people driven into Central and Western Europe, a completely new element of disintegration was introduced into postwar Europe. Denationalization became a powerful weapon of totalitarian politics, and the constitutional inability of European nation-states to guarantee human rights to those who had lost nationally guaranteed rights, made it possible for the persecuting governments to impose their standard of values even upon their opponents. Those whom the persecutor had singled out as scum of the earth... actually were received as scum of the earth everywhere; those whom persecution had called undesirable became the* indésirables *of Europe...*'[8]

7. Arbitrary deprivation of nationality remains a serious international issue, whether in the context of groups or of individuals. Article 12 of the International Covenant on

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4 R Plender, *International Migration Law* (2nd edition (Dordrecht, Martinus Nijhoff, 1988), p144.

5 P Weis, (note 1), p120.

6 A Zolberg, A Suhrke & A Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York, OUP, 1989) p18.

7 H Arendt, *The origins of totalitarianism* (2nd edn, New York, Harcourt, 1968), p267.

8 *Ibid*, p269.

Civil and Political Rights 1966 ('ICCPR'), ratified by Azerbaijan on 13 August 1992, provides for liberty of movement within the State and to leave one's own country, and at article 12(4) that '*[n]o one shall be arbitrarily deprived of the right to enter his own country*'. The UN Human Rights Committee's *General Comment No. 27, Freedom of Movement (Article 12)* provides *inter alia that:*

> '*19. The right of a person to enter his or her own country recognizes the special relationship of a person to that country. The right has various facets. It implies the right to remain in one's own country. It includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality). The right to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries.*
>
> ...
>
> *21. In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.*'[9]

8. The Report of the UN Secretary-General of 19 December 2013, *Human rights and arbitrary deprivation of nationality* states as '*General considerations regarding loss or deprivation of nationality*' that:

> '*Any interference with the enjoyment of nationality has a significant impact on the enjoyment of rights. Therefore, loss or deprivation of nationality must meet certain conditions in order to comply with international law, in particular the prohibition of arbitrary deprivation of nationality. These conditions include serving a legitimate purpose, being the least intrusive instrument to achieve the desired result and being proportional to the interest to be protected.*
>
> *Where loss or deprivation of nationality leads to statelessness, the impact on the individual is particularly severe. International law therefore strictly limits the circumstances in which loss or deprivation of nationality leading to statelessness can be recognized as serving a legitimate purpose. The 1961 Convention on the Reduction of Statelessness (1961 Convention) and the 1997 European Convention on Nationality both accept that statelessness may, exceptionally, result from the loss or deprivation of nationality in response to its fraudulent acquisition. The 1961 Convention establishes a set of basic rules which prohibit loss or deprivation of nationality where the result is to leave an*

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9 UN Human Rights Committee, *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, §§ 19, 21.

individual stateless. The 1961 Convention contains a limitative set of exceptions to these rules, recognizing a narrow set of circumstances in which loss or deprivation of nationality leading to statelessness may serve a legitimate purpose. Even in such cases, however, the loss or deprivation of nationality must satisfy the principle of proportionality. The consequences of any withdrawal of nationality must be carefully weighed against the gravity of the behaviour or offence for which the withdrawal of nationality is prescribed. Given the severity of the consequences where statelessness results, it may be difficult to justify loss or deprivation resulting in statelessness in terms of proportionality.'[10]

Azerbaijan acceded to the 1961 Convention on 16 August 1996. It has not signed or ratified the 1997 European Convention on Nationality.

9. Over time a number of countries have considered practices of deprivation of nationality as unconstitutional, for reasons of human dignity embedded in domestic instruments which parallel important parts of the Convention protections.[11] Also, in recent years arbitrary deprivation of nationality has had to be addressed not only as a breach of human rights *per se*, but also as a serious breach of human rights standards capable therefore of amounting to '*persecution*' for purposes of article 1A(2) of the Convention relating to the Status of Refugees 1951.[12] As will be detailed in addressing the primary questions below, the Convention has also been applied to situations of loss or denial of nationality and attached rights.

10. This short statement of the history demonstrates the gravity of the human rights problems that denationalisation may promote. It is in this context that ISI is particularly grateful to be able to put forward these Written Submissions concerning the specific matters addressed in turn below.

The impact that deprivation of citizenship, including forcing a person to renounce his or her nationality, has on their right to privacy within the meaning of Article 8 of the Convention and international treaties to which the respondent State is a party.

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10 UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, §4.

11 In *Trop v Dulles, Secretary of State* (1957) 356 US 86, at 101, denationalisation was described by Warren CJ as a punishment which *'strips a citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself... In short the expatriate has lost the right to have rights.'* The US Supreme Court did not find denaturalisation unconstitutional in another case decided at the same time, *Perez v Brownell* 356 US 44 (1958), but reversed this conclusion later in *Afroyim v. Rusk*, 387 U.S. 253 (1967).

12 *Inter alia Tesfamichael v Minister for Immigration and Multicultural Affairs* [1999] FCA 1661 (Australia); *Lazarevic v SSHD* [1997] EWCA Civ 1007; [1997] 1 WLR 1107, *EB (Ethiopia) v Secretary of State for the Home Department* [2007] EWCA Civ 809; [2009] QB 1, *MA (Ethiopia) v Secretary of State for the Home Department* [2009] EWCA Civ 289; [2010] INLR 1, and *ST (Ethnic Eritrean – nationality – return) Ethiopia CG* [2011] UKUT 252 (IAC) (United Kingdom); *9 C 3.95* (BVerwG 24 October 1995) and *10 C 50.07* (BVerwG 26 Feb 2009) (Germany); *Haile v Gonzales* 421 F3d 493 (7th Circuit, 29 Aug 2005); *Haile v Holder*, 591 F3d 572, 574 (7th Circuit, 6 Jan 2010); *Stserba v Holder*, 646 F 3d 964, 978 (6th Circuit, 20 May 2011) (United States). A survey of some cases is at H Lambert, 'Comparative Perspectives on Arbitrary Deprivation of Nationality and Refugee Status' (2015) 64 ICLQ 1. For a full exploration of the relevant principles, see E Fripp, (note 3 above), ch6.

11. Article 8 of the Convention protects the right to establish details of a person's identity as an individual human being (*inter alia Goodwin v United Kingdom* [GC], no. 28957/95, §90, ECHR 2002-VI, and *Mikulic v Croatia,* no. 53176/99, §53, ECHR 2002-I). Article 8 has repeatedly been held capable of applying to exclusion from a particular territory, rather than obstacles to integration internally: for instance, in *Slivenko v Latvia* [GC] no 48321/99; [2003] ECHR 498; (2004) 39 EHRR 24, at §96 ('*the Court cannot but find that the applicants' removal from Latvia constituted an interference with their "private life" and their "home" within the meaning of Article 8 §1 of the Convention*'), *Kurić and Ors v Slovenia,* no 26828/06 (Chamber) [2010] ECHR 1129, at §361 ('*...the prolonged refusal of the Slovenian authorities to regulate the applicants' situation comprehensively... and to issue permanent residence permits to individual applicants, constitutes an interference with the exercise of the applicants' rights to respect for their private and/or family life, especially in cases of statelessness.*'), *Genovese v Malta,* no. 53124/09, [2011] ECHR 1590, (2014) 58 EHRR 25, §33, *Kurić and Ors v Slovenia,* no. 26828/06 (Grand Chamber) [2012] ECHR 1083, §339 ('*...the Grand Chamber sees no reason to depart from the Chamber's findings that, although the "erasure" had been carried out before 28 June 1994, when the Convention entered into force in respect of Slovenia, the applicants had a private or family life or both in Slovenia within the meaning of Article 8 § 1 of the Convention at the material time, and that the "erasure" interfered with their Article 8 rights and continues to do so*'), *Mennesson v France,* no. 65192/11 [2014] ECHR 664, §97, and *Hoti v Croatia,* no. 633111/14 [2018] ECHR 373, §119 ('*Article 8 protects, inter alia, the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity. Thus, the totality of social ties between a migrant and the community in which he or she lives constitutes part of the concept of private life under Article 8...*').

12. It is the Court's well-established case law that arbitrary deprivation of citizenship or nationality may '*raise an issue under Article 8 because of its impact on the private life of an individual, which concept is wide enough to embrace aspects of a person's social identity*'.[13] The Court has confirmed that it is the impact that the deprivation has on an applicant's social identity, even in the absence of family life, that brings it within the scope of article 8.[14]

13. ISI submits that it is consistent with international and European human rights law that rights concerning citizenship and nationality be recognised as closely linked to the right to private and family life.[15] ISI refers to the persuasive opinion of Judge Pinto de Albuquerque, in *Ramadan v Malta*, at §11:

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13 *Genovese v Malta*, no. 53124/09, 11 January 2012, §33; *Mennesson v France*, no. 65192/11, 26 September 2014, §97.

14 *Ibid.*

15 While the Convention does not explicitly provide for a right to citizenship or nationality, article 8 cannot be divorced from other international standards such as articles 12 and 24 ICCPR; article 5 International Convention on the Elimination of All Forms of Racial Discrimination 1965; articles 7-8 Convention on the Rights of the Child 1989; article 9 Convention of the Elimination of All Forms of Discrimination against Women 1979; article 18 Convention on the Rights of Persons with Disabilities 2006 to which the respondent State is a party and article 15 of the Universal Declaration of Human Rights 1948.

'In sum, the now well-established prohibition of arbitrary denial or revocation of citizenship in the Court's case-law presupposes, by logical implication, the existence of a right to citizenship under Article 8 of the Convention, read in conjunction with Article 3 of Protocol No. 43.

Furthermore, a systemic interpretation of both provisions in line with the Council of Europe standards on statelessness warrants the conclusion that State citizenship belongs to the core of an individual identity.'[16]

14. In the present case the deprivation of nationality breaches the right to respect for private and family life and home. Despite the use of forced renunciation rather than direct denial of nationality, the applicant has suffered effective denationalisation of a particularly arbitrary nature. On the facts communicated by the Court in the present case, the applicant's denationalisation can therefore be distinguished from the Court's decisions in *Ramadan v Malta* (no. 76136/12, §89) and *Karassev v Finland* (no. 31414/96, p. 12) which the Court concluded did not constitute arbitrary deprivation and found no violation of article 8. What is more, it cannot be justified either '*as in accordance with the law*' or as '*necessary in a democratic society*' by reference to one or more of the identified interests.

The 'chilling effect' that the deprivation of citizenship and resultant statelessness can have on individuals' right to freedom of expression within the meaning of Article 10 of the Convention.

15. It will be evident that arbitrary deprivation of nationality, or even the mere threat of it, has a serious effect upon the right to freedom of expression under article 10. It interferes with freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers.

16. It is well-established case law of this Court that criminal sanctions[17] and severe civil sanctions, for example, excessive financial compensation or penalties[18] may have a chilling effect on freedom of expression and may lead to self-censorship. Indeed, the mere threat of such sanctions can cause a chilling effect that results in the restrain of freedom of expression.[19] The Venice Committee has explained that this chilling effect is highly problematic when it affects, in particular, those trying to shed light on corruption and abuse in high places.[20] Human rights defenders, such as the applicant in the present case, are particularly at risk to invidious sanctions that aim to motivate the self-censorship expression and cause a chill effect on free expression within the wider human rights defender community.

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16 *Ramadan v Malta*, 21 June 2016, no. 76136/12, dissenting opinion of Judge Pinto de Albuquerque, §11.

17 *Kaperzynski v Poland*, no. 43206/07, 3 April 2012, §§70, 74; *Dmitriyevskiy v Russia*, no. 42168/06, 3 October 2017, 117.

18 *Tolstoy v United Kingdom*; *Mirror Group Newspapers Limited v the United Kingdom*, no. 39401/04 , 18 January 2011, §201.

19 *Altug Taner Akcam v Turkey*, no. 27520/07, 25 January 2012, §§75, 82.

20 European Commission for Democracy through Law (Venice Commission), Complication of Venice Commission Opinions and Reports Concerning Freedom of Expression and Media, 19 September 2016, Council of Europe, CDL-PI(2016)011, available at: https://www.venice.coe.int/webforms/documents/?pdf=cdl-pi(2016)011-e, p35.

17. ISI submits that deprivation of citizenship, or the threat of it, constitutes an invidious sanction which interferes with an individuals' right to freedom of expression within the meaning of article 10. Where such deprivation is likely to result in statelessness, the chilling effect is likely to be more severe.

18. Acts by States in relation to nationality, up to and including denationalisation, have often targeted the exercise of freedom of expression by journalists, activists, and members of civil society. In *Vidal Martins v Uruguay*, Communication No. R.13/57, U.N. Doc. Supp. No. 40 (A/37/40), 157 (1982) a journalist outside her own country was denied a passport without explanation, interpreted as conduct designed to punish her for past journalistic activity or to prevent her return to her own country and resumption of journalistic activity there, was found to breach article 12(2) ICCPR. In *Ivcher Bronstein v Peru*, 6 February 2001, (2001) IACHR Ser C No 74, IHRL 1457 the Inter-American Court of Human Rights found that the applicant had been deprived of nationality in order to remove him from editorial control of a television channel and to restrict his freedom of expression manifested by denunciation of grave violations of human rights and acts of corruption. The Inter-American Court pointed to the jurisprudence of this Court concerning the same subject:

> *'152. The European Court has also recognized this criterion, when it stated that freedom of expression constituted one of the essential pillars of democratic society and a fundamental condition for its progress and the personal development of each individual. This freedom should not only be guaranteed with regard to the dissemination of information and ideas that are received favorably or considered inoffensive or indifferent, but also with regard to those that offend, are unwelcome or shock the State or any sector of the population.*
>
> *153. According to the European Court, the foregoing is of particular importance when applied to the press. It not only implies that it is the task of the media to transmit information and ideas on matters of public interest, but also that the public has the right to receive them.'*

19. Interference, on the facts in the present case, breaches the protected right and is not permitted by reference to '*such formalities, conditions, restrictions or penalties as are prescribed by law and 'necessary in a democratic society*' for one or more of the reasons stated at article 10 paragraph 2.

The scale and context in which the deprivation of citizenship is being used in Europe to restrict the rights of human rights defenders for purposes not prescribed by the Convention itself within the meaning of Article 18.

20. Over the last decade, states have increasingly strengthened their powers to deprive citizens of their nationality, as one of a number of measures to protect national security. For example, in 2017, Russia, The Netherlands, and Turkey amended their legislation to expand grounds under which nationality can be deprived. In light of this growing trend and its potential impact on the exercise of other human rights, including the freedom of expression and right to private life, ISI and its partners have conducted research on citizenship deprivation policies and practices in 42 countries globally, of

which 13 were European countries. ISI's research revealed that of the 42 countries globally, 22 had expanded their nationality deprivation powers over the past 15 years. Of the 13 European countries studied, 9 countries (Austria, Belgium, Bosnia and Herzegovina, Denmark, France, the Netherlands, Russia, Turkey and the United Kingdom) had expanded their powers.[21]

21. This trend of 'citizenship deprivation' is relevant to the question of whether such powers can and are being used to restrict the rights of human rights defenders for purposes not prescribed by the Convention within the meaning of Article 18. In *Merabishvili v Georgia* the Grand Chamber of this Court recently clarified the interpretation and application of article 18.[22] This interpretation is summarised in the Court's Guide on article 18 of the Convention states, as follows:

> '*When considering an allegation under Article 18 the Court must establish:*
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> - *whether the restriction of the applicant's right or freedom was applied for an ulterior purpose;*
> - *whether the restriction pursued both a purpose prescribed by the Convention and an ulterior one, that is, whether there was a plurality of purposes;*
> - *which purpose was predominant.*'[23]

22. As will be elaborated below, the evidence points to an emerging trend towards the abuse of citizenship deprivation powers in Europe and beyond, where citizenship deprivation on grounds of national security is, in practice, used to pursue ulterior purposes (for example, to restrict the rights and of human rights defenders, including their free speech). Further, even in cases where it may be argued that citizenship deprivation measures legitimately pursue a purpose prescribed by the Convention namely, the protection of national security, in reality, such measures can also pursue ulterior purposes within the meaning of article 18 of the Convention.

23. The practice in Turkey is the clearest example, which ISI would like to bring to the attention of the Court. The Turkish Government published Decree (KHK) 680 on 6 January 2017, six months after an attempted *coup d'état*, establishing citizenship deprivation procedures for Turkish citizens living outside of Turkey.[24] This measure was part of broader measures taken under the pretext of protecting national security in the aftermath of the attempted *coup d'état*. Under Decree 680, those declared as being under investigation for certain crimes, '*Offences against National Security*' and '*Offences against the Constitutional Order and Operation of Constitutional Rules*'

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21 For this research, 42 countries were randomly selected to survey covering the following aspects relating to citizenship deprivation: current legislation, legislative history, authority and procedures of withdrawal in a national security context, jurisprudence, practice and future developments. This research was conducted by Ashurst and ISI.

22 *Merabishvili v. Georgia*, application no. 72508/13, 28 November 2017, §§264-354.

23 European Court of Human Rights, *Guide on Article 18 of the European Convention on Human Rights, Limitation on use of restrictions on rights*, 31 August 2018, https://www.echr.coe.int/Documents/Guide_Art_18_ENG.pdf, p8.

24 For a more detailed overview and comment of the Turkey situation, see Institute on Statelessness and Inclusion, *Arbitrary deprivation of nationality and denial of consular services to Turkish citizens: Policy Brief*, July 2017, available at: http://www.institutesi.org/policy-brief-Turkey-arbitrary-deprivation-of-nationality_2017.pdf.

would be provided a three month timeframe to return to Turkey and surrender themselves for investigation. Those who fail to return within that period lose citizenship, with no right of appeal. No distinction is made between those who migrated many years prior to the attempted *coup d'état* and those who left the country later. Many affected persons have only Turkish citizenship. The deprivation of citizenship places them at risk of statelessness. Being rendered stateless while residing in a foreign country can have a permanent impact on the private and family life of affected persons. Stateless persons with no leave to remain in their country of residence often face deportation and detention, resulting in the breaking up of families. The threat of such extreme consequences in turn, can have a chilling effect on the important work carried out by human rights defenders living in exile, who hitherto, by virtue of being beyond the state's reach, were able to speak with greater freedom about human rights abuses being carried out in Turkey. ISI's research has revealed that human rights defenders, minorities and political opponents have been targeted using this Decree, with the intended chilling effect of silencing them and also making an example of them.[25]

24. The United Kingdom is another country in which citizenship deprivation measures have been used to target humanitarian workers. The United Kingdom Government has extremely broad citizenship revocation powers giving the State Secretary the power to deprive citizenship if such deprivation is '*conducive to the public good*', without any prior court decision.[26] It is unclear what is understood as acts conducive to the public good. An estimated 45-50 individuals have been deprived of their British citizenship under this provision since 2011. This broadened deprivation ground follows from amendments that were made to the 1981 British Nationality Act in 2006. Prior to this, citizenship revocation was limited to citizens who had done '*anything seriously prejudicial to the vital interests of the UK*'.[27] In November 2017, the United Kingdom Home Secretary revoked British citizenship of three aid workers as they were deemed a threat to national security. Two persons were believed to '*present a risk to the national security of the United Kingdom*'. In another case, a volunteer aid worker was '*assessed to have been involved in terrorism-related activity*' and '*Islamist extremist activities*'.[28] All three have demonstrable track records as humanitarian aid workers and deny involvement in terrorist activities. The Government has not put forward evidence and the persons concerned fear permanent exclusion from the United Kingdom, with significant and permanent impacts on their private and family lives (article 8). As with the Turkey example above, the implementation of citizenship deprivation measures in this manner also negatively impacts the right to a fair trial (article 6) and effective remedy (article 13) among other Convention rights.

25. ISI would also like to submit to the Court for its consideration, concerns with regard to the abuse of citizenship deprivation powers beyond Europe. ISI is concerned that non-European states, particularly in the Gulf region but also elsewhere, are emboldened by the erosion of standards in Europe in this regard. The European example is often used to justify human rights violations elsewhere. For example, in Bahrain, 116 citizens were deprived of their citizenship in May 2018 on the basis that they were a threat to

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25 *Ibid.*

26 Article 40(2) British Nationality Act 1981

27 Section 40(1) British Nationality Act 1981

28 https://www.middleeasteye.net/news/exclusive-british-aid-workers-syria-stripped-citizenship-240907317.

national security. Since 2012, a total of 718 persons have been denationalised and many of them rendered stateless.[29] Article 10 of the Bahrain Citizenship Law and its amendments stipulates that nationality can be revoked if a person engages in the military service of a foreign country; if a person helps or engages in the service of an enemy country; or if a person causes '*harm to state security*'. There are no due process standards and the authorities have unfettered discretion in determining the scope and meaning of the term 'harm to the state'. In Bahrain, and elsewhere in the Gulf region, citizenship deprivation powers have been used as a measure – not to protect national security – but to silence and victimise human rights defenders, minority voices and political opponents. The impact on free speech and right to family life has been profound.[30]

26. The above examples demonstrate ISI's wider concerns that national security is a loose and broadly defined consideration, which is increasingly used by some Contracting Parties to the Convention, including the respondent State, to restrict rights for ulterior purposes, including limiting the free speech and right to private life of targeted persons, in a manner which contravenes article 18 of the Convention. Turning to the contemporaneous practices of the respondent State, ISI refers to the recent decision in *Aliyev v Azerbaijan*, by which this Court found that the respondent State violated article 18 in conjunction with articles 5 and 8. In considering the totality of the facts of the case, the Court concluded that the actions of the respondent State '*were driven by improper reasons and the actual purpose of the impugned measures was to silence and to punish the applicant for his activities in the area of human rights as well as to prevent him from continuing those activities*'.[31]

Conclusions

27. Arbitrary deprivation of nationality has a long history in Europe and research indicates that there has been a trend over the past decade of, contrary to article 18 of the Convention, Contracting Parties to the Convention re-establishing the practice to sanction and silence human rights defenders. Cases in which an individual renounces his nationality due to state coercion fall within the ambit of arbitrary deprivation of nationality. It has been well-established by this Court that practices of arbitrary deprivation of nationality may interfere with the right to private and family life and, on the facts communicated by this Court, the deprivation of the applicant's nationality does interfere with his rights under article 8 of the Convention. ISI also submits that arbitrary deprivation of nationality may result in a serious infringement of the right to freedom of expression under article 10 of the Convention and similar standards in international human rights law.

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29 Amnesty International, *Bahrain: Citizenship of 115 people revoked in 'ludicrous' mass trial*, 15 May 2018, https://www.amnesty.org/en/latest/news/2018/05/bahrain-citizenship-of-115-people-revoked-in-ludicrous-mass-trial/.

30 See for example, Institute on Statelessness and Inclusion, UN Human Rights Council Universal Periodic Review Submissions on Bahrain (27th Session, September 2016, available here: http://www.institutesi.org/BahrainUPR2016.pdf) and on the United Arab Emirates (29th Session, June 2017, available here: http://www.institutesi.org/UPR29_UAE.pdf).

31 *Aliyev v Azerbaijan*, nos. 68762/14 and 71200/14, 20 September 2018, §215.