



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 28 September 2018

CommDH(2018)23
English only

**Third party intervention
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

**Application No. 1/16
Emin HUSEYNOV v. Azerbaijan**

Introduction

1. On 6 July 2018, the Council of Europe Commissioner for Human Rights (hereinafter: 'the Commissioner') informed the European Court of Human Rights (hereinafter: 'the Court') of her decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights (hereinafter: 'the Convention'), and to submit written observations concerning the case of *Emin Huseynov v. Azerbaijan*. This case relates to the deprivation of nationality of the applicant, a media freedom advocate and human rights defender in Azerbaijan, who became stateless. It also relates to the alleged use of this deprivation for purposes other than those prescribed in the Convention, and in particular as a means to silence the applicant as a civil society activist.
2. According to her mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.¹
3. With reference to human rights defenders in particular, the Commissioner has a specific duty to work in this field, further to the adoption by the Council of Europe Committee of Ministers of the Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, on 6 February 2008.
4. The Declaration "[i]nvites the Commissioner for Human Rights to strengthen the role and capacity of [her] Office in order to provide strong and effective protection for human rights defenders by [...] continuing to meet with a broad range of defenders during [her] country visits and to report publicly on the situation of human rights defenders." It also calls on Council of Europe member states to "co-operate with the Council of Europe human rights mechanisms and in particular [...] with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested."
5. The present intervention is notably based on the work of the Commissioner's predecessor, Nils Muižnieks, in particular the written comments he submitted to the Court in a number of other cases concerning Azerbaijan. His work included three visits to Azerbaijan in November 2012, May 2013 and October 2014, as well as continuous country monitoring. It also builds on thematic work on statelessness carried out by the Commissioner's Office over the years.
6. Section I of the present written submission focuses on major issues concerning the right to freedom of expression and the situation of human rights defenders in Azerbaijan; Section II addresses the issue of arbitrary deprivation of nationality; and Section III contains observations on reprisals against human rights defenders and the use of deprivation of nationality in retaliation for human rights activities. These sections are followed by the Commissioner's conclusions.

I. Major human rights issues in Azerbaijan with regard to the right to freedom of expression and the situation of human rights defenders

7. A number of deficiencies in the protection of freedom of expression in Azerbaijan have been identified by the Commissioner's Office and other international stakeholders, leading to the conclusion that Azerbaijan was failing to comply with its international obligations which require safeguarding this freedom. In addition, the situation of human rights defenders in

¹ [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

Azerbaijan has been a long-standing concern of the Commissioner's Office. Reprisals, including judicial harassment, against critical voices in general, and those denouncing human rights violations in the country in particular, have been a widespread phenomenon in Azerbaijan, to which the Commissioner's Office has repeatedly attempted to bring the attention of the authorities.

8. Given the background of the applicant as a prominent media freedom activist and the fact that charges were brought against him in 2014 at the same time as against a number of Azerbaijani human rights defenders in relation to their NGO work, the Commissioner considers that the applicant's case provides an important illustration of the shortcomings existing in the area of freedom of expression as well as of the challenges faced by human rights defenders in that country.
9. As stressed in a number of other submissions to the Court, the Commissioner believes that the present case is an illustration of a serious and systemic human rights problem in Azerbaijan, which, in spite of numerous efforts by the Commissioner's Office and other international stakeholders, remains unaddressed to date.

Freedom of expression

10. Regarding freedom of expression in particular, the Commissioner, in line with her predecessor's interventions, recently called on the authorities to release all persons who are detained because of the critical views they have expressed.
11. In his report following his May 2013 visit to Azerbaijan,² the Commissioner's predecessor expressed serious concerns at the apparent intensification of the practice of the unjustified or selective criminal prosecution of journalists and others who express critical opinions. He noted that several media workers had recently been prosecuted and/or sentenced for incitement to national, racial or religious hatred and in some instances terrorism, as well as for hooliganism, tax evasion, drug possession and illegal possession of weapons, with the credibility of the relevant charges being widely challenged. As a result, a number of journalists had to serve long prison terms or carry out corrective labour and/or pay heavy fines.
12. In an update to the report published in April 2014, the Commissioner's predecessor stressed that the situation with regard to freedom of expression in Azerbaijan had deteriorated.³ He noted that in the comments they had submitted in response to his 2013 report, the Azerbaijani authorities had stated that the journalists referred to in his report had not been prosecuted for their professional activity. However, he pointed to consistent reports according to which these cases are based on charges which lack credibility and often follow critical reporting or posts on the Internet.
13. These findings and conclusions were echoed by a number of other international bodies.⁴ In an interim resolution adopted in 2014,⁵ the Committee of Ministers of the Council of Europe, supervising the execution of the judgments adopted by the European Court of Human Rights in the cases of *Mahmudov and Agazade v. Azerbaijan* and *Fatullayev v. Azerbaijan*,

² Commissioner for Human Rights, Report on Azerbaijan, 6 August 2013, [CommDH\(2013\)14](#).

³ Commissioner for Human Rights, Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property, 23 April 2014, [CommDH\(2014\)10](#).

⁴ For instance the Parliamentary Assembly of the Council of Europe: see the report of the Monitoring Committee on "[The functioning of democratic institutions in Azerbaijan](#)", 25 September 2017, paras. 44-56, and the report of the Committee on Legal Affairs and Human Rights on "[Protecting human rights defenders in Council of Europe member States](#)", 6 June 2018, para. 14.

⁵ [Interim Resolution CM/ResDH\(2014\)183](#), adopted by the Committee of Ministers of the Council of Europe on 25 September 2014.

considered that, as regards the arbitrary application of criminal legislation to limit freedom of expression, "the present situation raises serious concerns, in particular on account of the reported recent use of different criminal laws - similar to the ones used in the present group of cases (accusations of illegal activities, abuse of authority, treason, hooliganism or other crimes which can have close links to the legitimate exercise of the freedom of expression) - against journalists, bloggers, lawyers and members of NGOs." In an interim resolution adopted in December 2015 relating to the execution of the same judgments, the Committee of Ministers "[e]xpressed anew its deepest concern in respect of the absence of any adequate response to the problem of the arbitrary application of the criminal law to restrict this fundamental freedom" and exhorted the Azerbaijani authorities "to adopt without further delay measures demonstrating their determination to solve the problems revealed."⁶

14. The Commissioner notes that the UN Human Rights Committee, in its last concluding observations regarding Azerbaijan, also reiterated its concerns "about extensive restrictions on freedom of expression in practice, including (...) consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc."⁷ It called on the Azerbaijani authorities to "take all measures necessary to guarantee the full enjoyment of freedom of expression by everyone in practice" and in particular to "take immediate steps to end any repression against the above-mentioned categories of persons, provide effective protection against persecution or retaliation and ensure that any restrictions on the exercise of their freedom of expression comply with the strict requirements of article 19 (3)"⁸ of the International Covenant on Civil and Political Rights.
15. Finally, the Commissioner notes that the issue of restrictions on freedom of expression was raised during Azerbaijan's recent Universal Periodic Review,⁹ with numerous States making recommendations to put an end to these restrictions, both direct and indirect, and to ensure that journalists, human rights defenders, NGOs and other civil society actors are able to carry out their legitimate activities without fear of threats or reprisals, obstruction or legal and administrative harassment.

Situation of human rights defenders

16. The Commissioner is most cognisant of the difficulties faced by human rights defenders in Azerbaijan. These challenges were more recently documented in the report of the UN Special Rapporteur on the situation of human rights defenders, Michel Forst, following his visit to the country.¹⁰ While highlighting the "continued stigmatization of defenders, which exposes them to heightened risks and produces a chilling effect on the public perception of them", the Special Rapporteur stressed that the "situation of civil society in Azerbaijan has seen serious setbacks since 2009, as the rights to freedom of expression, assembly and association have increasingly been curtailed when exercised in opposition to the Government or its policies".¹¹ During his visit, the Special Rapporteur "received many reports and testimonies pointing to the intensified crackdown on and criminalization of civil society in Azerbaijan. In that context,

⁶ Interim Resolution CM/ResDH(2015)250, adopted by the Committee of Ministers of the Council of Europe on 9 December 2015. See also Interim Resolution CM/ResDH(2016)145, adopted by the Committee of Ministers of the Council of Europe on 8 June 2016.

⁷ Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan, 16 November 2016, CCPR/C/AZE/CO/4, para. 36.

⁸ *Ibid.*, para. 37.

⁹ Report of the Working Group on the Universal Periodic Review – Azerbaijan, 11 July 2018, A/HRC/39/14.

¹⁰ Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan (14 to 22 September 2016), 20 February 2017, A/HRC/34/52/Add.3.

¹¹ *Ibid.*, para. 28.

the authorities have targeted defenders, journalists, lawyers and grassroots activists through the use of politically motivated criminal prosecutions, arrests, imprisonment and travel bans. They have also used detention to intimidate political and social media activists on what often seem to be spurious misdemeanour charges of resisting police orders or petty hooliganism.”¹²

17. In addition, the UN Human Rights Committee has expressed concerns “about reports that (...) journalists, opposition politicians, human rights defenders and lawyers [were] allegedly subjected to travel bans in retaliation for engaging in their professional activities.”¹³
18. With regard to freedom of association, the Commissioner’s predecessors have in the past expressed concern about severe obstacles encountered by several national and international NGOs, especially those operating in the field of human rights and those openly critical of the government, in carrying out their work freely, some of them having even been obliged to cease their activities in Azerbaijan. In this regard, the Commissioner notes that a number of arrests and detentions of Azerbaijani human rights defenders are related to shortcomings in the NGO legislation and the way it is implemented. Irregularities found in the activities of a number of the NGOs concerned actually derived from the onerous legislative framework relating to registration, reporting obligations, grants registration and tax requirements.
19. The opening of criminal investigations against the applicant in August 2014 is part of this more general crackdown on dissenting voices and human rights defenders in Azerbaijan, which intensified over the summer of 2014. In the Commissioner’s view, the prosecutions of human rights defenders and prominent journalists in Azerbaijan constitute reprisals against those who have co-operated with the Council of Europe or other organisations and denounced human rights violations in the country. The close working relationships of the Commissioner’s Office and the Council of Europe as a whole with these human rights defenders reinforce the belief that they are being deliberately targeted with criminal proceedings as a result of their engagement in activities that should be perfectly legal in a well-functioning democracy. Almost all have participated in human rights defenders’ round-tables organised by the Commissioner’s Office in recent years. Others have provided legal aid on a number of cases before the European Court of Human Rights, or have provided information to monitoring mechanisms of the Council of Europe. Finally, some of them have organised or participated in several side-events during sessions of the Parliamentary Assembly of the Council of Europe over the last few years. All of them are important and reliable partners of the Council of Europe and the Commissioner’s Office.
20. The applicant’s case provides a disturbing illustration of this pattern of reprisals against those who co-operate with international institutions, including the Council of Europe, to address human rights shortcomings in Azerbaijan.
21. The applicant is a journalist and prominent human rights defender, who has shed light on human rights abuses in Azerbaijan. He was also the chairman of the Institute for Reporters’ Freedom and Safety (IRFS), an organisation dedicated to defending the rights of journalists and protecting the right to freedom of expression and information in Azerbaijan. The applicant had previously been arrested and interrogated by the Azerbaijani authorities in relation to his work. In 2008, the applicant was arrested at a café in Baku during a private gathering and had to be admitted to intensive care in a hospital following his release from police custody. In 2015, the Court found¹⁴ that the applicant had been ill-treated during his arrest and while he was in police detention and that there had been no effective investigation carried out in this respect (violation of Article 3 of the Convention). It further found that he had been unlawfully

¹² *Ibid.*, para. 32.

¹³ Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan, 16 November 2016, [CCPR/C/AZE/CO/4](#), para. 30.

¹⁴ *Emin Huseynov v. Azerbaijan*, application no. 59135/09, judgment of 7 May 2015.

deprived of his liberty (Article 5) and that the police intervention had amounted to an unlawful interference with his freedom of assembly (Article 11).

22. The applicant has been a key civil society partner of the Council of Europe, providing valuable information about the human rights situation in Azerbaijan, and media freedom in particular, over the past several years.
23. The applicant has also organised and participated in several side-events during sessions of the Parliamentary Assembly of the Council of Europe. He notably co-organised and took part, along with other Azerbaijani human rights defenders, in a side-event during the June 2014 session of the Parliamentary Assembly. The event, which took place while Azerbaijan was holding the Chairmanship of the Council of Europe Committee of Ministers, was aimed at drawing attention to negative developments in the field of human rights in the country, including the new registration requirements and obligations for NGOs operating in Azerbaijan.
24. The Commissioner notes that the travel ban and the opening of criminal investigations against the applicant followed shortly after his participation in this side-event in Strasbourg. She shares the concern expressed by many that the measures taken with regard to the applicant were an attempt to silence his efforts to report on human rights violations and aims to prevent him from continuing his work.
25. In a statement published on 7 August 2014, the Commissioner's predecessor stated that the travel ban imposed on the applicant provided yet another disturbing illustration of how human rights defenders in Azerbaijan were systematically threatened with an instrumental use of criminal suits.¹⁵ The Commissioner's predecessor subsequently met the applicant during his visit to Azerbaijan in October 2014, while the latter was in hiding. After his visit, the Commissioner's predecessor published a message on Facebook, referring to the applicant's health problems and to the fact that "doctors who have examined him say he will not survive an Azerbaijani prison."¹⁶
26. In her previous capacity as OSCE Representative on Freedom of the Media, the Commissioner also followed with concern the fate of the applicant. In a statement published on 8 August 2014, she deplored the attempts to raid the IRFS office, the intimidation of the applicant's family as well as the travel ban which was imposed on him, underlining that these were "further proof of a wide-scale deterioration of the media freedom situation in Azerbaijan that includes targeted persecution of independent journalists, freedom of expression advocates and bloggers".¹⁷

II. Arbitrary deprivation of nationality

International and European standards

27. Article 15 of the 1948 Universal Declaration of Human Rights states that "Everyone has the right to a nationality" and explicitly provides that "No one shall be arbitrarily deprived of his nationality." The UN General Assembly, in its resolution 50/152, also recognised the fundamental nature of the prohibition of arbitrary deprivation of nationality.
28. The Commissioner notes that the 1961 UN Convention on the Reduction of Statelessness, to which Azerbaijan is a State party, specifically prohibits the deprivation of nationality from a person or group of persons on racial, ethnic, religious or political grounds (Article 9). It also

¹⁵ [Concerns over the situation of human rights defenders in Azerbaijan](#), 7 August 2014.

¹⁶ [Facebook post](#), 24 Novembre 2014.

¹⁷ [OSCE representative deplores intensifying harassment of media freedom activists and organizations in Azerbaijan, calls on authorities to stop persecution of free voices](#), 8 August 2014.

provides that the deprivation of nationality must always be in accordance with law, which shall provide for the person concerned the right to a fair hearing (Article 8(4)).

29. Moreover, under the 1997 European Convention on Nationality,¹⁸ revocation of nationality is foreseeable in certain cases that are exhaustively listed in Article 7, including when a person voluntarily joins a foreign military service or when they engage in a conduct seriously prejudicial to the vital interests of the state. However, such revocation should occur in a manner that is non-discriminatory on, *inter alia*, religious or ethnic origin grounds. Furthermore, under Article 12 of the European Convention on Nationality, all decisions must be subject to an administrative or judicial review. The individuals concerned must enjoy a right of appeal against decisions relating to nationality.
30. Noting that “the full enjoyment of all human rights and fundamental freedoms of an individual might be impeded as a result of the arbitrary deprivation of nationality, and that such individuals are placed in a situation of increased vulnerability to human rights violations”,¹⁹ the Human Rights Council also stressed the importance to “observe minimum procedural standards in order to ensure that decisions concerning the acquisition, deprivation or change of nationality do not contain any element of arbitrariness and are subject to review, in conformity with their international human rights obligations.”²⁰
31. The Commissioner further observes that, while the right to a nationality is not as such enshrined in the European Convention on Human Rights or its Protocols, some judgments of the European Court of Human Rights over the last few years have paved the way for further developments. They include the 2016 judgment in *Ramadan v. Malta* in which the Court considered that an arbitrary revocation of citizenship might in certain circumstances raise an issue under Article 8 (Right to respect for private and family life) of the Convention because of the impact of such a revocation on the private life of the individual.²¹ In determining whether a revocation of citizenship is in breach of Article 8, the Court has addressed two separate issues: whether the revocation was arbitrary; and what the consequences of revocation were for the applicant.²²
32. It follows from the above standards that five elements have to be taken into account cumulatively to determine whether a deprivation of nationality is arbitrary or not: the deprivation should not be based on discriminatory grounds; it must be in accordance with the law; it must have a legitimate purpose; the State should consider the proportionality of this measure, taking into account the full circumstances of the case, notably the existence of less intrusive means; and due process guarantees also need to be respected throughout the procedure regarding deprivation.
33. In addition, and most importantly, it should be considered whether the deprivation of nationality would result in statelessness.

Avoidance of statelessness

34. Deprivation of nationality that leads to statelessness is prohibited by Article 8 of the 1961 UN Convention on the Reduction of Statelessness, except where the individual obtained nationality by misrepresentation or fraud. However, States may retain the right to deprive a person of his or her nationality even if this leads to statelessness where he or she has

¹⁸ Azerbaijan did not sign nor ratify this Convention.

¹⁹ Human rights and arbitrary deprivation of nationality, [Resolution](#) adopted by the Human Rights Council on 30 June 2016, A/HRC/RES/32/5, para. 7.

²⁰ *Ibid.*, para. 13.

²¹ *Ramadan v. Malta*, application no. 76136/12, judgment of 21 June 2016, para. 85.

²² *K2 v. the United Kingdom*, application no. 42387/13, decision of 7 February 2017, para. 49.

committed acts inconsistent with the duty of loyalty to the State or has made an oath or formal declaration of allegiance to another State (Article 8 (3)).

35. The European Convention on nationality contains a similar provision, prohibiting deprivation of nationality that would result in statelessness, with the exception of a fraudulent acquisition of nationality (Article 7(3)). As noted in the Explanatory Report to that Convention, the obligation to avoid statelessness has become part of customary international law.²³
36. Additionally, the Commissioner recalls that, on 15 September 1999, the Committee of Ministers of the Council of Europe adopted a recommendation on the avoidance and reduction of statelessness, which notably states that: "In order to avoid, as far as possible, situations of statelessness, a State should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the state concerned, should be taken into account."²⁴
37. This recommendation points to the particular importance of avoiding statelessness as a consequence of loss of nationality. Statelessness can indeed have serious consequences for the enjoyment of rights and stateless persons are placed in a situation of increased vulnerability to human rights violations. The Court notably highlighted the particularly vulnerable position of stateless persons *vis-à-vis* the risk of arbitrary detention.²⁵ Recently, it accepted that the uncertainty of the residence status of a stateless applicant had adverse repercussions on his private life.²⁶
38. The prevention of statelessness has thus been a priority issue for the Commissioner's Office and has been addressed extensively in the framework of both country monitoring and thematic work. Successive Commissioners have consistently raised awareness about various aspects of the situation of stateless persons in Europe and stressed the need to enhance their protection and ensure that their human rights are upheld. The Commissioners have continuously called on member states to take measures to completely eradicate and prevent statelessness. They have in particular underscored that member states should ensure that their legislation contains adequate safeguards to prevent statelessness, in compliance with the above-mentioned international standards. However, in the course of his work, the Commissioner's predecessor has had to conclude that racism and discrimination against entire population groups and fears inherited from the past, including assumptions about minority groups constituting a threat to the security or linguistic identity of a country, continue to form the bedrock for the perpetuation of statelessness.
39. The Commissioner would like to underline that statelessness generates far-reaching human rights concerns: without nationality, one lacks not only political rights, but often social and economic rights as well. On a symbolic level, nationality implies being a full member of a national community, and even further, of humanity.²⁷ In practice, stateless persons are frequently deprived of access to education, health care, social security and social benefits as well as adequate housing, which often drives them into poverty and marginalisation. Moreover, it can be difficult, and sometimes impossible, for them to register a marriage or the birth of a child; they are mostly excluded from participation in public affairs and can also be deprived of access to justice.

²³ Explanatory Report to the European Convention on Nationality, para. 33.

²⁴ Recommendation No. R (99) 18 on the avoidance and reduction of statelessness.

²⁵ *Amie and Others v. Bulgaria*, application no. 58149/08, judgment of 12 February 2013, and *Kim v. Russia*, application no. 442360/13, judgment of 17 July 2014.

²⁶ *Hoti v. Croatia*, application no. 63311/14, judgment of 26 April 2018, para. 126.

²⁷ See the Human Rights Comment: Governments should act in the best interest of stateless children, 15 January 2013.

40. In the Commissioner's view, given the very serious impact that statelessness may have on an individual's enjoyment of a wide range of human rights, there should be no deprivation of nationality that leads to statelessness.

III. Reprisals against human rights defenders and the use of deprivation of nationality in retaliation for human rights activities

41. The Commissioner observes at the outset that the charges brought against the applicant, namely tax evasion, illegal entrepreneurship and abuse of power, were identical to those initiated against a number of Azerbaijani human rights defenders in relation to their NGO work. This reinforces the belief that, by deliberately attempting to make independent human rights work in Azerbaijan impossible, the restrictive legislative framework constitutes an integral part of the pattern of judicial harassment and reprisals against human rights defenders prevailing in Azerbaijan.
42. However, human rights defenders in Azerbaijan have not only experienced arrests and detention, but also intimidation, including of their family, travel bans, freezing of assets, search and seizure of documents, as well as disbarment,²⁸ amongst other measures. In the present case, reprisals against the applicant culminated in the deprivation of his nationality. The Commissioner notes in this connection that the applicant, who feared for his safety and went into hiding, had no other choice than signing a request to renounce his nationality.

Reprisals as human rights violations

43. The Commissioner notes that the judgment of the European Court of Human Rights in the case of *Ilgar Mammadov*,²⁹ brings the broader issue of selective justice in Azerbaijan to the forefront. In this judgment, the Court found that the applicant had been detained for purposes other than having committed an offence, and that there had accordingly been a violation of Article 18 of the Convention (limitation on use of restrictions on rights) taken in conjunction with Article 5 (right to liberty and security). The Court stressed that the circumstances of the case "indicate that the actual purpose of the impugned measures was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide."³⁰
44. In two other judgments,³¹ the Court found again a violation of Article 18 with respect to the arrest and detention of the human rights defenders Rasul Jafarov and Anar Mammadli. In these cases, the Court ruled that the applicants' arrest and detention were intended to silence and respectively punish them for Mr Jafarov's activities in the area of human rights and Mr Mammadli's activities in the area of electoral monitoring. Similarly, in the recent case of *Intigam Aliyev*,³² the Court held that the actual purpose of the impugned measures, including the search at Mr Aliyev's home and office and the seizure of numerous documents, was to silence and to punish him for his activities in the area of human rights as well as to prevent him from continuing those activities, and found a violation of Article 18 taken in conjunction with Article 5 but also for the first time with Article 8 of the Convention.

²⁸ See the [third party intervention](#) by the Commissioner for human rights in the case of *Bagirov v. Azerbaijan* (application no. 28198/15).

²⁹ *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13, judgment of 22 May 2014.

³⁰ *Ibid.*, para. 143.

³¹ *Rasul Jafarov v. Azerbaijan*, application no. 69981/14, judgment of 17 March 2016 and *Anar Mammadli v. Azerbaijan*, application no. 47145/14, judgment of 19 April 2018.

³² *Intigam Aliyev v. Azerbaijan*, applications nos. 68762/14 and 71200/14, judgment of 20 September 2018.

45. On the basis of her Office's work on Azerbaijan, the Commissioner believes that similar issues arise with respect to a number of measures adopted against other individuals who have voiced critical views, including human rights defenders.

Reprisals as a breach to the rule of law

46. The Commissioner underlines that intimidation and reprisals against human rights defenders in retaliation for their work at the international, regional or national levels not only amount to attacks on human rights, but also breach the rule of law. She shares the views of the UN Working Group on arbitrary detention which stated that these practices constituted an abuse of authority and violated the rule of law that Azerbaijan had agreed to comply with.³³
47. In this respect, the Commissioner recalls Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,³⁴ which describes the activities in which human rights defenders may engage at national and international level, including the right to communicate with non-governmental or intergovernmental organisations.
48. In addition, the Council of Europe 2008 Declaration calls on member states "to ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures."³⁵
49. In a 2013 Resolution on Protecting Human Rights Defenders, the UN Human Rights Council reaffirmed the right of unhindered access to and communication with international and regional human rights mechanisms and called on states to avoid legislation that has the effect of undermining that right and to refrain from any act of intimidation or reprisals against those who co-operate, have co-operated or seek to co-operate with international institutions, including their family members and associates.³⁶
50. Finally, the Commissioner would like to draw attention to the Guidelines on the Protection of Human Rights Defenders,³⁷ which also provide that states shall ensure that human rights defenders enjoy the right to unhindered access to and communication with international and regional bodies and states that they should refrain from any action that may frustrate or undermine the right of human rights defenders to provide information to international bodies; they should notably not prevent human rights defenders from meeting with international delegations when they visit the country.

³³ UN Working Group on Arbitrary Detention, Statement upon the conclusion of its visit to Azerbaijan (16-25 May 2016).

³⁴ Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998: For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

³⁵ Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted by the Committee of Ministers on 6 February 2008, para. 2 (vii).

³⁶ Human Rights Council Resolution 22/6 on Protecting Human Rights Defenders, adopted on 12 April 2013, para. 13 and 14.

³⁷ OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders, 10 June 2014, J. Right to access and communicate with international bodies.

51. As stressed in the Explanatory report to these Guidelines, "international human rights mechanisms depend on the information submitted by individuals and groups in order to support the implementation of international human rights standards by states. Therefore, any form of reprisal against human rights defenders for providing information to international bodies, or otherwise obstructing their interaction with these bodies, is both a human rights violation and, at the same time, undermines the functioning of mechanisms with which states have committed to co-operate in good faith."

Conclusions

52. The Commissioner points out that the deprivation of nationality of the applicant should not be viewed in isolation but as part of a broader pattern of intimidation of human rights defenders in Azerbaijan and reprisals against those who co-operate with international institutions, including the Council of Europe.

53. In conclusion, the Commissioner is of the opinion that:

- There is a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities. This concerns human rights defenders, but also journalists, bloggers and other activists, who may face a variety of criminal charges which defy credibility. Such charges are largely seen as an attempt to silence the persons concerned and are closely linked to the legitimate exercise by them of their right to freedom of expression.
- Moreover, deprivation of nationality might also be used as a tool of punishment to silence those expressing dissenting views. The consequences for the enjoyment by these persons of their human rights are even more serious when deprivation of nationality leads to statelessness.
- Deprivation of nationality resulting in statelessness is at odds with the general obligation to avoid statelessness.
- Reprisals against human rights defenders in retaliation for their work at the international, regional or national levels amount to human rights violations. In particular, deprivation of nationality in such circumstances raises issues under Article 8 of the Convention, in the absence of a legitimate aim.

54. Lastly, the Commissioner would like to reiterate that reprisals against human rights defenders in Azerbaijan should immediately stop and all persons who are in detention because of their views expressed or legitimate civic activity should be released.

